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SELECTIONS AND DOCUMENTS IN ECONOMICS

EDITED BY

WILLIAM Z. RIPLEY, Ph.D.

PROFESSOR OF ECONOMICS, HARVARD UNIVERSITY

**SELECTIONS AND DOCUMENTS
IN ECONOMICS**

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fessor of Economics, Harvard University

***ECONOMIC HISTORY OF THE UNITED
STATES.***

By Guy Stevens Callender, Professor of Political
Economy, Yale University

RAILWAY PROBLEMS

EDITED, WITH AN INTRODUCTION

BY

WILLIAM Z. RIPLEY, PH.D.

ROPER PROFESSOR OF ECONOMICS, HARVARD UNIVERSITY

REVISED EDITION

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PREFACE TO THE SECOND EDITION

There are two substantial reasons for recasting this collection of reprints originally made up in 1907. The first is that the rapid course of events, legislative and economic, in the United States, especially in the field of transportation, has rendered the old collection obsolete — the later developments having since been described either officially in documents or else in the files of the economic journals. The second, and by no means less important reason to me, as an instructor in the subject forced constantly to face the problem of providing solid reading matter for large classes, is the completion of a systematic treatise upon the subject with which these selections may be closely correlated. Certain chapters of my own in the first edition, having been revised and brought up to date, are now transferred to my *Railroads: Rates and Regulation* or will appear in the second volume, *Railroads: Finance and Organization*. Others, like Tausig's classic on the theory of rates, have been so completely incorporated in the text of the former of these volumes, with such amendment as the progress of economic science permits, as to render their separate appearance unnecessary. And certain other chapters on legislation then incomplete, are now, in my judgment, preferably described in a more extended account of such matters in the above-named systematic treatises.

In place of these omissions, a number of substantial additions have been made. The admirable account of early conditions in Pearson's *American Railroad Builder* is too good to be lost on the shelves of general biography; yet it is impracticable on grounds both of time and expense to place the entire volume in the hands of each student. A number of significant recent opinions of the Interstate Commerce Commission have been added, because of the light they throw upon the radically changed economic and legal conditions since 1905. The admirable description by Theodore Brent of the complexities of railroad rate making and regulation, prepared for the late Robert Mather, president of the Rock Island system, affords an illustration of the manner

in which competition generalizes almost at once any set of local conditions. In connection with the proper adjustment of relations between the states and the Federal government, now in process of settlement by the Supreme Court, this chapter is particularly illuminating.

Recent legal developments are also strikingly described in several new chapters added to this edition. The status of the carriers under the Sherman Anti-Trust Act would seem to have been pretty well defined in the course of the extended proceedings dissolving the Union-Southern Pacific merger. A fit sequel to the Northern Securities decision, already described in the first edition, is thus had. A second subject, yet in flux in the courts, is the determination of reasonable rates. The excellent review of judicial findings by Mr. Justice Swayze of the court of last resort in New Jersey covers this topic. And, finally, the most perplexing and interrelated subjects of physical valuation, reasonable rates and conflict of state and Federal authority are authoritatively treated in the recent Supreme Court Minnesota rate decision.

An effort has been made to tie in the illustrative material in this volume with my systematic treatise on the subject above mentioned. For it is believed that an exhaustive examination of a well-chosen set of typical examples — following, in short, the case system of the law schools — affords excellent mental training to the student. For this purpose, the cases may preferably be read before studying the treatise. Then the latter will assist in elucidating the difficult points and providing the proper historical setting. For the mature student of the subject, this order of reading may well be reversed. The bird's-eye view and general discussion may profitably be followed by a careful and minute analysis of particular incidents. Only thus may the great intricacy and the extremely delicate adjustment of commercial affairs in practice be duly appreciated. The detailed account of typical cases is one of the most certain correctives for the *a priori* philosopher and the zealous innovator. These several services to students and men of affairs, it is hoped, will be rendered by an extended set of cross references in all of the volumes above mentioned.

WILLIAM Z. RIPLEY

PREFACE TO THE FIRST EDITION

This collection of reprints, like its predecessor, *Trusts, Pools, and Corporations*, is directed to the accomplishment of two purposes: not alone to render more easily accessible to the interested public, valuable technical material upon a question of paramount interest and importance at the present time, but also to facilitate the work of the college instructor in the economics of transportation. The worst evil of modern academic life, particularly under the elective system, is that the student may so seldom be called upon to think for himself;—not merely to “cram” and memorize, to absorb information predigested by an instructor, but rather to actively use his reasoning powers in effecting recombinations of ideas. Mere passive contact for a brief period of life with cultivating influences and high ideals, as exemplified in books, general environment, and, it is to be hoped, instructors of the right sort, tends to produce the diletante, unless at the same time the mind is constantly invigorated by action. This is especially true of the economic and social sciences. To provide material, preferably of a debatable sort, which may be worked over under discussion in the class room, instead of being merely committed to memory, constitutes the pedagogical aim of this book. Some of the extracts, especially the historical ones, are of course not susceptible of such treatment. They are merely reference readings for convenient use. But the others, notably the decisions of the Interstate Commerce Commission, usually provide debatable matter of an admirable sort. This is peculiarly true of cases or decisions with a dissenting minority opinion. Another advantage which many of these economic cases possess, over propositions in mathematics, logic, or even law, as material for training the intelligence, is that they are always charged with human, and often with great public, interest; and that they incidentally involve an acquaintance with the underlying business conditions and trade relations of the country at large.

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INTRODUCTION

The first impression conveyed by our historical selections is that they unduly emphasize certain infamous events in the development of the American transportation system. There is surely nothing more discreditable in the economic history of the United States than the defrauding of the government and of innocent investors by the use of development and construction companies, of which the Credit Mobilier was a leading example, by such men as Stanford Durant, and Crocker; the wrecking of the Erie Railroad by Jay Gould and Jim Fisk; and the utterly unscrupulous manipulation of railroad rates by the Rockefellers and their associates, in order to destroy competition with the Standard Oil Company. Happily such occurrences are exceptional in the economic life of a nation. Nevertheless their description is essential to an understanding of the whole, just as pathological research is needed for a true comprehension of the normal and healthy physiological processes. It would have been far pleasanter to record in detail the course of events by which the wonderful achievement of opening up a great continent to settlement was accomplished. Practically this is impossible within reasonable limits of space. Not the prosaic and normal, but the spectacular, phases of our economic life have been as yet adequately described. The most that can be claimed for the selection of certain of these events is that, while perhaps extreme examples, they are significant as indicating possibilities under the then prevailing state of public opinion and law.

Another less practical, and in fact more important, reason for throwing these infamous events into high light, lies in their instructive character as illustrating the evils generally attendant upon a pioneer stage of development, together with the abuses which naturally arise under conditions of absolutely free

competition. The great advance in public morality which to-day refuses to tolerate such abuses becomes at once apparent. In the case of the chapters from the history of the Erie Railroad and its evil spirit, Jay Gould, the corruption of the state judiciary was perhaps the most deplorable feature of the affair. But the necessity of strict financial accountability of the directors of great public-service corporations, both to the government and to the stockholders, is made evident with equal clearness. Public sentiment — more sensitive to financial delinquencies to-day than it was a generation ago — has compelled the creation of governmental agencies for securing publicity. By such means scandalous abuses of trust are more easily detected and punished. Too often in the past, well-merited punishment has not taken place through the agency of the duly constituted legal authorities. The evil doers have received their just deserts only through condemnation by contemporary public opinion, perpetuated afterward by historical record. To keep alive some of these old scandals cannot fail to impress the fact that the evil which men do lives after them. It is not to be condoned, either by purely private morality, or by material success achieved during life, followed by large benefactions after death.

The chapter upon "Standard Oil Rebates" has had a more direct bearing upon contemporary affairs. The undoubtedly typical events therein described were a powerful factor in rousing public sentiment in favor of the original Act to Regulate Commerce of 1887. Their fearless republication, fully authenticated by documentary evidence, in the admirable History of the Standard Oil Company by Miss Tarbell, — confirmed as it was in its main conclusions by the masterly "Report upon the Transportation of Petroleum," by the United States Commissioner of Corporations,¹ — was an equally powerful influence in crystallizing public sentiment in favor of the recently enacted Hepburn Bill of 1906.² Public opinion to-day is unanimous in the

¹ Ripley's Railroads: Rates and Regulation, chap. vi, on "Personal Discrimination," gives the necessary historical setting.

² *Idem*, chap. xiv-xvii, describes and analyzes this legislation.

shippers warned and prepared in advance. Discrimination in the use of coal cars, always operating of course in favor of the large shipper, was discovered on the Pennsylvania system even more recently. For years the use of private-car lines by the Chicago packers, known as the Beef Trust, to stifle all effective competition from independents, has been well known; but it was not fully disclosed until the general agitation for railroad reform was taken up by President Roosevelt. And all the time, as it now appears, the plain old-fashioned mode of direct repayment of a part of the published tariff rate has continued in secret. The American Sugar Refining Company (in 1906) and the Colorado Fuel & Iron Company (in 1905) have already been convicted of this offense in the Federal Courts. The climax is now capped by the masterly revelations of the United States Commissioner of Corporations, in his Report upon the Transportation of Petroleum of 1906. That hoary old offender, the Standard Oil Company, is now on trial in the Federal Courts, having been shown by an investigation of the books of the railways by expert accountants, to have been regularly in the enjoyment of preferential rates over competitors in all parts of the country. The evidence upon this point, taken in connection with the public professions of those charged with its management, is one of the most extraordinary exposures of loose business morality which this present generation is likely to witness. This revelation, together with that of the Armstrong Insurance Committee in New York, is unfortunately bound to furnish powerful ammunition for the use of political demagogues, in the furtherance of their selfish ends. For the dispassionate student of public affairs the argument is greatly strengthened in favor of an extension of public regulation both of railroads and trusts. The advantages of an enforced and ample publicity have been most effectively demonstrated by this rather remarkable series of events.

Pooling, or agreements between carriers for obviating competition, was commonly practiced prior to the Interstate Commerce Act of 1887. That law expressly prohibited it; and the courts have also interpreted the Anti-Trust Act of 1890 as applicable

to railway contracts of the same kind. Moreover the progress of railway consolidation since 1898 has been such, especially in the southern states, that the necessity for pooling agreements is far less obvious than it was twenty years ago. The enactment of Federal legislation for the prevention of rate cutting and secret discrimination insures a greater measure of stability. Cut-throat competition like that of earlier days has become almost impossible. Competition to-day is rather of service and facilities at established rates, than as between actual rates themselves. Consequently our chapter upon the Southern Railway & Steamship Association,¹ at once the most effective and enduring organization of its kind, is now seemingly of historic interest alone. Yet a cogent reason for describing such a railway pool in detail nevertheless exists, and derives great force from the nature of impending problems in railway operation. Many competent students, other than railroad men, are convinced that the present prohibition of pooling ought to be repealed now that the great principle of public supervision and control of rates has been reaffirmed and securely established by the Hepburn Act of 1906.

The United States Industrial Commission of 1900 in its final report included an elaborate discussion of this topic, leading to the conclusion that agreements between carriers, subject of course to approval by the Interstate Commerce Commission, would not only greatly facilitate railway operation but also contribute powerfully to stability of rates. Since drafting this report, I have been able to investigate the subject further, with particular reference to the economic wastes incident to even normal and healthy railway competition.² The conviction that the most certain remedy for many of these economic wastes in transportation will be found in a rehabilitation of pooling under governmental supervision, has been greatly strengthened also by a somewhat extended personal investigation of railway practice in Europe. In the British Isles, the broad principle that railways are essentially natural monopolies, and should both legally and administratively be treated as such, has always

¹ *Vide*, p. 128, *infra*. ² Ripley's Railroads: Rates and Regulation, chap. viii.

as the St. Louis-Pacific Coast jobbers' controversy.¹ Eliminating personal discrimination and classification, our remaining selections in this field of inquiry are thus narrowed down to two, — namely, absolutely reasonable rates and relative rates for competing markets.

The *inherent reasonableness of railroad rates* is a question less apt to arise with reference to a single commodity than to an entire schedule or tariff. It is a matter of far less concern to an individual merchant or group of traders that the absolute freight rate is high than that it (be it in general high or low) is higher than the rate enjoyed by a competitor. For even if it be unreasonably high, so long as it applies to all traders in the same market, the surcharge can immediately be levied upon the consumer by all dealers alike through an enhancement of prices. In the noted Cincinnati Freight Bureau case,² the Middle West was not solicitous for the welfare of the consuming public in the southeastern states when it complained that freight rates from western centers into the South were unduly high. The western merchants were interested in a reduction because their rates were in fact higher than those enjoyed by the Atlantic seaboard cities to the same points. Their complaint concerned itself essentially with the relativity of charges from different competing centers to a common market. The complainant as to the *absolute* reasonableness of southern freight rates should properly be the general consuming public in the region in question. In a similar fashion in another of our cases,³ Danville complains, not primarily that her freight rates are high, but rather that they are higher than those granted to Richmond, Norfolk, and Lynchburg. The burden of complaint as to the absolute unreasonableness of the rates in question should properly proceed, not from the organized merchants of Danville but from her general consuming population. Nevertheless such questions as concern the absolute level of freight rates do sometimes arise, as in the notable case of the Chicago Stock Yards. In this instance an arbitrary switching charge of two dollars per car was imposed by the railroads in 1894, applicable to all

¹ *Vide*, p. 429, *infra*.

² *Vide*, p. 153, *infra*.

³ *Vide*, p. 402, *infra*.

shippers alike. Issue was raised as to whether such an extra charge was justified by the circumstances and conditions under which this particular rate was imposed.¹

Far more often, however, than in the case of individual or particular charges, for the reasons above outlined, issues of fact concerning the absolute reasonableness of rates in and of themselves are apt to be raised with reference to entire schedules and tariffs. The Interstate Commerce Commission, as in the case of the freight-rate increases subsequent to 1900, was called upon to act in the general interests of the consuming public. Were these general increases justified by the widespread rise of prices and were they commensurate with the enhancement of costs of operation? The problem in such cases is mainly one of fact, to be discussed and decided by experts. These facts vary in their significance from year to year. Reproduction of such investigations in a volume of this sort would be of little value. Of course the future development of the Interstate Commerce Commission is bound to bring it face to face with just such broad issues. Matters of paramount importance will be involved. But, like matters of classification, they are too technical for our immediate purpose.

While cases suitable for reproduction in this volume rarely turn entirely upon the absolute reasonableness of rates, such an issue is often incidentally involved, as for instance in the Cincinnati and St. Louis cases above mentioned and in those of Chattanooga² and Savannah.³ Given the fact that the relativity of two rates is unreasonable, is the one too high or the other too low? Either contingency might give rise to the inequality called in question. A just decision as to relative reasonableness must therefore reckon with the problem of inherent reasonableness. But the main interest of such issues for the mere student of railway economics lies less in the bald facts as stated, which may vary from time to time, than in the opposing arguments and principles invoked, which are in their essence permanent.

¹ This long-standing controversy, with others concerning the general rates on cattle, seems likely to be made the occasion for a first test of the new Hepburn Act.

² P. 266, *infra*.

³ Pp. 252 and 314, *infra*.

Alleged *relatively unreasonable rates for competing markets* constitute the basis for complaints before the Interstate Commerce Commission far more frequently than do those concerning the absolute amount of the rate charged. The reasons for this have been set forth in the preceding paragraphs. And, common as such complaints have been in the past, it is certain that in future, with the ever-increasing commercial interrelation between different parts of the United States, such alleged grievances will claim a preponderating share of the attention of any administrative commission. Veritable puzzles in rate adjustment constantly arise, which bring out in high relief the economic peculiarities of railway, as distinct from ordinary industrial, competition. For this reason a large number of the cases herein reprinted deal with this phase of the subject.

By and large, these cases may be roughly set apart into two classes corresponding respectively to two distinct aspects of the problem of relative adjustment of rates for competing localities. Of these the first and simplest arises as between two competing markets lying upon and served by the *same* line of railroad. The problem is to adjust with relative fairness the rates to near and distant points on the same line, one often a local or way station, while the other enjoys the benefit of low competitive rates. This is a problem as old as railroading, commonly designated as the long-and-short-haul question. The second class of problems is at once more recent and comprehensive in its scope. It concerns the relativity of rates to or from a common market from various points, not on the same but on *different* lines. A decision in this latter case amounts practically to a delimitation of the entire area of the market. The long-and-short-haul question raises issue as to the extent of a market by one dimension alone, while this second phase of the matter touches the circumscription of the market both in length and breadth, — and one might almost add, in thickness as well. Such is the daily problem of the professional traffic manager. It has not frequently been presented for settlement to the Interstate Commerce Commission, but is certain to do so increasingly often with every increment of regulative power conferred by Congress

judge as to the controlling force of this competition, without reference to the opinion of the Interstate Commerce Commission. How fully this opinion emasculated the original statute is vividly described by Justice Harlan in his dissenting opinion.¹

The Alabama Midland decision was rendered in 1897. Three cases, — the Savannah Freight Bureau ;² Dallas, Texas ; and St. Cloud, Minnesota,³ — decided during the next three years, illustrate the scope of authority exercised by the Commission under the long-and-short-haul clause as thus legally interpreted. In the first two exemption from its provisions was granted ; that is to say, the railways were permitted to charge less to the more distant than to the intermediate points ; while in the St. Cloud case the Commission held that this ought not to be allowed. For in this last case it appeared that the practice was actually prejudicial to St. Cloud, while in the other two the intermediate points suffered no peculiar damage. Many other interesting comparisons between these cases may be brought out in detailed analysis and discussion. Especial interest is lent to the St. Cloud case, however, because, although granting exemption to the carriers, the Commission was evidently struggling to regain some of the authority and prestige lost by the Alabama Midland decision. The arrogance of the railroads, especially in the southern states, seemed to render necessary either new legislation or a rehabilitation of the old. In the Danville, Virginia, case⁴ in 1900 the Commission sought to shift its ground, mainly on the basis of another decision of the Supreme Court, as a reading of the case will show. It thus embarked upon a line of interpretation, not yet at this writing definitely settled by the court of last resort.⁵ Appeal to the Supreme Court is still pending. Meantime, however, the entire inadequacy of the law, unless the new powers granted by the Hepburn Bill of 1906 are construed to supplement the old long-and-short-haul clause (which appears doubtful), is amply shown by the Chattanooga case. This, as well as the Danville case, presents a picture of intolerable

¹ *Vide*, p. 385. Compare also p. 288, *infra*, in the Chattanooga case.

² P. 314, *infra*.

³ P. 279, *infra*.

⁴ P. 402, *infra*.

⁵ Ripley's Railroads: Rates and Regulation, chaps. xiv and xix, brings this to 1912.

monopolistic abuse of power by the railways of the southern states, which would not be permitted in communities where public sentiment is more alert and better organized.¹ Unless some remedy can be found for the injustice indicated by these southern cases, either under a more liberal interpretation of the long-and-short-haul clause or by means of the newly enacted Hepburn Bill of 1906, a constant incentive to popular agitation will exist.

Two cases reprinted herein illustrate the complicated phase of *the distance problem*, wherein several shipping points at various degrees of remoteness from a common market are located, not on the same but on entirely different lines of railway. At Eau Claire, Wis.,² for example, it was a question of adjusting rates from a number of lumber-producing centers over a series of different railways converging on a market at the Missouri river. The convergence of these lines upon a common market renders this case somewhat analogous to that of the trunk line rate system, based upon distance percentages.³ Both are entirely different from the Hutchinson salt case,⁴ in which rates to a common market, St. Louis or New Orleans, not on converging lines, but on railways from entirely opposite directions, were called in question. A controversy was here involved as to whether St. Louis and the South should be supplied with salt from the Kansas or the Michigan fields; exactly the same contest involved of late in the struggle of the lumbermen of the far Northwest, of Louisiana, of the far Southeast, and of the northern central states, to gain entry on even terms to the great markets of Chicago and its tributary treeless territory.⁵ In such cases as these we attain the climax of complexity in the problems of rate adjustment. Vast areas, a multitude of inter-related rates, and the welfare of large populations depend upon their just settlement. Fortunately in future a divided responsibility between the traffic managers and governmental experts

¹ Cf. especially the Savannah Naval Stores case, p. 252. The Troy case (p. 359) and that of Dawson, Ga. (p. 387), are typical of the flagrant discrimination which existed.

² P. 231, *infra*.

³ Ripley's Railroads, chap. x.

⁴ P. 216, *infra*.

⁵ This is ably discussed with a fine map in the Senate Committee on Interstate Commerce Hearings, 1905, Vol. II.

seems likely to obtain in this work since the enactment of the Hepburn Bill of 1906. The decision no longer rests solely with the traffic manager, representing only one of the many parties in interest.

Certain of our cases are intended to contrast the *general systems of railway rates* prevalent in different sections of the United States. Three main divisions are distinguishable; viz., those of trunk line territory, of the southern states, and of the transcontinental carriers, including the Pacific coast. The trunk line scheme,¹ as might be expected, is the most highly developed system, not only from the point of view of simplicity but of justice as well. It illustrates the dominating importance of distance as a factor in sound rate adjustment. The southern or "basing-point" system, exemplified in the Troy,² Dawson,³ Chattanooga,⁴ and Danville⁵ cases, lies at the opposite extreme. It shows what evils may result from the exercise of absolutely arbitrary powers by railway managers, acting solely with a view to their own interests and regardless of the general public welfare. To be sure, certain geographical difficulties, no greater than those of trunk line territory, but peculiar to the South, have to be considered. But even making all due allowances, both for the sparseness of its population and the frequency of water competition, the defiance of the fundamental principles of justice in rate making are a constant incentive to governmental interference.

The transcontinental and Pacific coast rate systems are interesting and peculiar, involving as they do constant consideration of the relative merits of transportation by sea and railroad. The San Bernardino case⁶ is indicative of this phase of the matter with reference to a particular class of goods; while the important case of the St. Louis jobbers⁷ raises the same issue with reference to a long list of commodities. But the latter case is of even wider scope. It discusses an issue which

¹ Transferred in this edition to our Railroads: Rates and Regulation, chap. x.

² P. 330, infra.

³ P. 402, infra.

⁴ P. 387, infra.

⁶ Interstate Commerce Reports, Vol. IX, pp. 42-60.

⁷ P. 390, infra.

⁷ P. 420, infra.

constantly arises all over the country with reference to distributive business. Shall California be supplied with hardware, for example, by means of wholesale shipments to San Francisco, followed by redistribution from that center; or shall the primary distribution take place from Chicago and St. Louis direct? The very existence of San Francisco as a commercial center is involved. It is the everlasting contest for supremacy between the great cities and those of medium size, as well as the struggle of each locality for economic independence. All through this volume issues of this sort are manifest to the observant eye, underlying what may appear to be relatively trivial complaints from a financial standpoint. There will be no end to it all until the firm foundations of a system based upon some scientific principle, as in the trunk line scheme, shall have been devised and adopted here as well as in the southern states.

The Export Rate case¹ is important as bearing upon a most difficult problem of commercial adjustment, which is continually cropping up for settlement, not only in the United States but all over Europe.² It might have been better, perhaps, to have reproduced the noted Import Rate case,³ in which the Interstate Commerce Commission was finally overruled by a bare majority opinion in the Supreme Court of the United States, after having been upheld in the two lower Federal Courts; but unfortunately both the length of that opinion and its unsatisfactory literary form rendered it impossible for republication. The issue raised concerned the legality of lower through rates on imports from Liverpool to San Francisco *via* New Orleans than were granted on domestic shipments from New Orleans to the same destination. Thus the rate on books, buttons, and hosiery, from Liverpool to San Francisco through New Orleans, was \$1.07 per hundred pounds. At the same time the domestic shipper was compelled to pay \$2.88, or two and one-half times as much, for a haul from New Orleans to San Francisco alone. In another important case tin plate was carried from Liverpool by steamer and rail through Philadelphia to Chicago for

¹ P. 487, *infra*.

² P. 761, *infra*.

³ Interstate Commerce Commission Reports, Vol. IV, pp. 450-533.

twenty-four cents per hundred pounds. For the American merchant in Philadelphia the rate to the same market was twenty-six cents. For the inland haul alone the Pennsylvania Railroad was receiving sixteen cents on the foreign goods, while coincidentally charging American merchants ten cents more for the same service. Discrimination against the American merchant in favor of foreign competition, not infrequently more than sufficient to overbalance any supposed protection afforded by the tariff, has been repeatedly proved in such cases as this. The duty on imported cement is eight cents per hundredweight. In one instance this duty with the total freight rate added amounted to only eighteen cents, as against a rate of twenty cents for the domestic producer from New York to the same point. There are reasons for this grievous discrimination against the domestic shipper, mainly concerned with the vagaries of ocean freight rates. Steamers must have ballast for the return trip to equalize outgoing shipments of grain and other exports, and they will carry heavy commodities, such as salt, cement, crockery, and glass, at extremely low rates. Nevertheless such imported commodities can be sold to advantage in competition with domestic goods only when the railways will contribute equally low rates to complete the shipment.

The Interstate Commerce Commission in this Import Rate case originally held that such discriminations were unlawful. Finally, however, the Supreme Court decided, with three members, including the Chief Justice, dissenting, that the Act to Regulate Commerce as phrased did not expressly prohibit the practice. Everything turned upon the interpretation of certain clauses in the law. No question was ever raised as to the economic issues involved, nor was it competent to these tribunals to pass upon such issues. The question was simply and solely this: When the Act to Regulate Commerce forbade inequality or discrimination between shippers, did it contemplate competition between one shipment originating within the country and others from foreign ports? Was the Interstate Commerce Commission, in other words, empowered, in interpreting this act, to consider circumstances and conditions *without* as well as

within the boundaries of the United States? If it was entitled to consider solely domestic conditions, it was certainly right and economically sound in forbidding such practices; if, on the other hand, it was required to take account of commercial conditions the world over, irrespective of the effect upon the domestic producer and internal trade, its decision should have been favorable to the railroads. To appreciate fully the extreme nicety of the legal points involved and the delicacy of the economic interests at issue, one must needs read the extended opinions both of the majority of the Supreme Court and of the three dissenting justices, including Chief Justice Fuller. But to interpret the reversal of the original decision of the Interstate Commerce Commission by this tribunal as in the slightest degree involving incompetence or judicial unfairness is a misrepresentation of all the facts involved. As in the preceding cases touching the interpretation of the long-and-short-haul clause, it may fairly be said that the consensus of opinion among business men, and certainly among the professional economists of the country, is on the side of the Commission in condemning such practices. As to the law, that has been decided otherwise by a narrow majority. An important question before the country is as to whether a law thus construed should not be amended so as to permit a reasonable limitation of such abnormal traffic in future.

Governmental regulation, constituting the third division of this volume, is in fact a subject much wider in scope than the mere control of common carriers. It touches and includes the broad field of governmental supervision or control, not of railroads alone but of all public-service corporations. Many of the considerations, for example, in the chapters on "Reasonable Rates"¹ and "The Doctrine of Judicial Review,"² as applied to Federal control of railroads, are equally applicable to the problems of state regulation of street railways or of municipal control of gas and electric lighting or any other public service. Great underlying principles of constitutional law, as defined by the Federal Courts, are shown in the making.

¹ P. 597, *infra*.

² P. 619, *infra*.

As an episode in the history of governmental regulation of public-service companies the enactment of the Hepburn Bill of 1906 cannot fail to be of note.¹ Not only on account of the scope and magnitude of the interests involved — covering, as the railway net does, the entire country, and representing an investment of \$12,000,000,000 — but also because of the powerful and well-organized opposition presented along the entire front, this piece of legislation is unique. It was a convincing demonstration of the power of public opinion when once thoroughly roused and ably led. The problem was vastly more difficult owing to the phenomenal growth of the business. The first law regulating railways was passed in 1887, after an agitation extending over nearly twenty years. Our domestic population from 1889 to 1903 increased slightly less than one third. The railroad mileage grew in about the same proportion. Yet the freight service of American railroads surpassed this rate of growth almost five times over. While population and mileage increased one third, the railroads in 1903 hauled the equivalent of two and one-half times the total volume of freight traffic handled in 1889. In other words, the ton mileage — representing the number of tons of freight hauled one mile — increased from 68,700,000,000 to 173,200,000,000.

Throughout the decade to 1900 the trend of affairs was all in favor of railway interests as against the government. The Alabama Midland decision of 1897² thoroughly emasculated the long-and-short-haul clause of the original act; and the Maximum Rate decision in the Cincinnati Freight Bureau cases³ deprived the Commission of any effective power to remedy unreasonable rates. During the same period the Anti-Trust Act of 1890 was greatly limited in its scope by a number of legal decisions. The inevitable reaction ensued. Under the leadership of President Roosevelt, public opinion was thoroughly aroused. It became evident to all unprejudiced persons that radical

¹ Federal legislation since 1905 is set forth in detail in Ripley's *Railroads: Rates and Regulation*, pp. 487-627.

² P. 378, *infra*.

³ P. 187, *infra*.

profoundly this condition affected the form of the Hepburn Bill of 1906 may be seen from the debates in Congress, and particularly in the Senate.

Whether the Doctrine of Judicial Review, subordinating the primary law-making to the law-interpreting branch of the government, will permit of a satisfactory solution of the ever-pressing problem of public regulation of railway rates, is called in question in the chapter upon that subject.¹ The great issue of the opening of the twentieth century, both here and in Europe, concerns individual rights in the narrower sense and private property, on the one hand, as opposed to public welfare, on the other. Always conceding that the success of Anglo-Saxon institutions is attributable in large measure to insistence upon the rights of the individual, it is nevertheless incontrovertible that the swing of the pendulum, for good or ill, is at this time in the direction of the public welfare, more or less regardless of personal or property rights. One sees it in the domain of factory legislation, of taxation, of regulation of trusts and common carriers, of insurance, — a long series of statutes prescribing the conditions under which women and children and even adult men may labor; the quality and even the kind of food and drink which they may consume; the forms in which business enterprises may be organized and the subsequent manner in which they may be conducted; nay, even the precise form in which their accounts shall be kept. Thus the problem of determining which branch of the government shall be supreme in matters of this sort is one which is vital to the stability of our institutions, but also, be it observed, to their capacity for progress. That, within the narrow domain of regulation of railway rates, some modification of present judicial opinion is necessary if such progress — defining progress in the narrow sense of change conformable to the popular will — is to ensue, cannot reasonably be doubted. In any event, the matter is one open to discussion, and of such paramount importance that it cannot long be overlooked or postponed. Of course for the moment the courts stand as the natural champions of individual and

¹ P. 619, *infra*.

property rights, but it should never be forgotten that in truly democratic countries the judges are chosen by the people directly or through the medium of a selected executive, so that this condition is not necessarily an enduring one. The popular will when persistently bent upon a definite goal is bound to prevail in the end. In the best interests of conservatism, therefore, the safest course for the judiciary will be not flatly to dam the course of public opinion when once clearly defined, lest a flood sweeping all before it result. That happened in the case of our Civil War. The true function of the courts should be to hold back the impending waters until the issue is clear, and thenceforth to so shape or divert the current of affairs that both the individual and the public welfare may interact upon one another to the good of both. Reverting to the specific matter of regulation of railway rates, one cannot doubt that some such compromise will be the final outcome.

European conditions and experience in railroad matters, described in the final division of these reprints, have until recently received little attention in the United States. Our problems were unique in themselves; and in so vast an area rail transportation was from the outset so vital to extended existence that the United States has been rather a pioneer than an imitator of Europe in all matters pertaining to construction and operation. But now that affairs are entering upon another stage of development, what with governmental regulation and the increasing density of population, it appears that much valuable information may be gleaned from European experience. At the present time this is peculiarly true of the British Isles, where the economic condition of private ownership and operation prevails as in the United States. On the other hand, owing to its minute area, with omnipresent water carriage by sea, the problems imposed by British geographical conditions are less instructive perhaps than those upon the Continent, especially in Germany and France.

With private ownership and operation of railways, the British government has had an extended experience in regulation by

Canadian Board of Railway Commissioners combines all the powers of the English Commission with those vested in the British Board of Trade. There is conferred a concentration of power over rates, both in England and Canada, beside which even our amended law of 1906 appears pale and colorless. Altogether the British experience is highly suggestive in all that concerns government regulation.

Government ownership of railroads is so obviously a remote possibility in the United States, so long as administrative regulation is effectively applied, that the experience of Germany in this field would seem to be unimportant. And yet, having due regard to her superb administrative system, and to her peculiar industrial problems, the service is so admirably adapted to her needs that it amply repays close investigation. From the point of view of public finance alone, the Prussian achievement of government ownership is extraordinary. In 1882, with a gross income of about \$109,000,000, a clear surplus above expenses and interest on debt of slightly more than \$10,000,000 resulted. This net profit has steadily risen. Ten years later it was about \$25,000,000; and in 1900 it had increased to \$99,000,000. In 1905, with a gross income of approximately \$105,000,000 (1,621,000,000 marks) expenses absorbed about \$250,000,000, and interest charges about \$28,000,000, leaving a net profit on the investment of more than \$125,000,000 (503,000,000 marks). A return of something like five and one-half per cent on the capital investment is indeed a notable result in government finance. This has been made possible because of two unique conditions; the wonderful industrial growth of Germany in the last two decades, and the high standard both of technical education and of the personnel of the government service. The railway net comprises only about one seventh of the mileage of our American roads, all operated in a densely populated country with high-grade traffic. No reasonable conclusion can be drawn from these results as to the advantages of government ownership in a vast, sparsely settled region like the United States. But we can learn much from certain features of the management of these German railroads, as set forth

our chapter on the subject.¹ One of the most admirable features is the system of advisory councils, composed jointly of traffic officials and of prominent representatives of shippers. Extended deliberation upon every adjustment of rates ensues; all possible complications are considered, with reference to export trade, fiscal receipts, economy in operation, territorial competition, and the like. Observation in the field strengthens the conclusion that a degree of peace and coöperation between the railroads and the shipping public, far better than that which prevails to-day in the United States, has followed as a result. The avoidance of economic wastes, such as are described in our chapter on the subject, are also strongly in contrast with our American practices. It is my conviction, all things considered, that our American transportation system is the best in the world. All the more reason why we should open our eyes to the excellences of the railroad systems of foreign countries.

WILLIAM Z. RIPLEY

HARVARD UNIVERSITY

¹ P. 803, *infra*.

RAILWAY PROBLEMS

I

A CHAPTER OF ERIE¹

THE history of the Erie Railway has been a checkered one. Chartered in 1832, and organized in 1833, the cost of its construction was then estimated at three millions of dollars, of which but one million was subscribed. By the time the first report was made the estimated cost had increased to six millions, and the work of construction was actually begun on the strength of stock subscriptions of a million and a half, and a loan of three millions from the State. In 1842 the estimated cost had increased to twelve millions and a half, and both means in hand and credit were wholly exhausted. Subscription books were opened, but no names were entered in them; the city of New York was applied to, and refused a loan of its credit; again the legislature was besieged, but the aid from this quarter was now hampered with inadmissible conditions; accordingly work was suspended, and the property of the insolvent corporation passed into the hands of assignees. In 1845 the State came again to the rescue; it surrendered all claim to the three millions it had already lent to the company; and one half of their old subscriptions having been given up by the stockholders, and a new subscription of three millions raised, the whole property of the road was mortgaged for three millions more. At last, in 1851, eighteen years after its commencement, the road was opened from Lake Erie to tide water. Its financial troubles had, however, as yet only begun, for in 1859 it could not meet the interest on its mortgages, and passed into the hands of a

¹ From Chapters of Erie and Other Essays, by (Hons.) Charles Francis Adams and Henry Adams, New York, 1886. By permission. The historical setting of these events is given in Ripley's Railroads, both in the volume on Rates (p. 16) and that on Finance (Stock-watering, etc.).

receiver. In 1861 an arrangement of interests was effected, and a new company was organized. The next year the old New York & Erie Railroad Company disappeared under a foreclosure of the fifth mortgage, and the present Erie Railway Company rose from its ashes. Meanwhile the original estimate of three millions had developed into an actual outlay of fifty millions; the 470 miles of track opened in 1842 had expanded into 773 miles in 1868; and the revenue, which the projectors had "confidently" estimated at something less than two millions in 1833, amounted to over five millions when the road passed into the hands of a receiver in 1859, and in 1865 reached the enormous sum of sixteen millions and a half.

* * * * *

The series of events in the Erie history which culminated in the struggle about to be narrated may be said to have had its origin some seventeen or eighteen years before, when Mr. Daniel Drew first made his appearance in the Board of Directors, where he remained down to the year 1868, generally holding also the office of treasurer of the corporation. Mr. Drew is what is known as a self-made man. Born in the year 1797, as a boy he drove cattle down from his native town of Carmel, in Putnam County, to the market of New York City, and, subsequently, was for years proprietor of the Bull's Head Tavern. Like his contemporary, and ally or opponent,—as the case might be, Cornelius Vanderbilt, he built up his fortunes in the steamboat interest, and subsequently extended his operations over the rapidly developing railroad system. Shrewd, unscrupulous, and very illiterate,—a strange combination of superstition and faithlessness, of daring and timidity,—often good-natured and sometimes generous,—he ever regarded his fiduciary position of director in a railroad as a means of manipulating its stock for his own advantage. For years he had been the leading bear of Wall Street, and his favorite haunts were the secret recesses of Erie. As treasurer of that corporation, he had, in its frequently recurring hours of need, advanced it sums which it could not have obtained elsewhere, and the obtaining of which was a necessity. He had been at once a good friend of the road and

the worst enemy it had as yet known. His management of his favorite stock had been cunning and recondite, and his ways inscrutable. Those who sought to follow him and those who sought to oppose him, alike found food for sad reflection; until at last he won for himself the expressive *sobriquet* of the Speculative Director. Sometimes, though rarely, he suffered greatly in the complications of Wall Street; more frequently he inflicted severe damage upon others. On the whole, however, his fortunes had greatly prospered, and the outbreak of the Erie war found him the actual possessor of some millions, and the reputed possessor of many more.

In the spring of 1866 Mr. Drew's manipulations of Erie culminated in an operation which was at the time regarded as a masterpiece; subsequent experience has, however, so improved upon it that it is now looked upon as an ordinary and inartistic piece of what is called "railroad financiering," a class of operations formerly known by a more opprobrious name. The stock of the road was then selling at about 95, and the corporation was, as usual, in debt, and in pressing need of money. As usual, also, it resorted to its treasurer. Mr. Drew stood ready to make the desired advances — upon security. Some twenty-eight thousand shares of its own authorized stock, which had never been issued, were at the time in the hands of the company, which also claimed, under the statutes of New York, the right of raising money by the issue of bonds, convertible, at the option of the holder, into stock. (The twenty-eight thousand unissued shares, and bonds for three millions of dollars, convertible into stock, were placed by the company in the hands of its treasurer, as security for a cash loan of \$3,500,000.) The negotiation had been quietly effected, and Mr. Drew's campaign now opened. Once more he was short of Erie. While Erie was buoyant, — while it steadily approximated to par, — while speculation was rampant, and that outside public, the delight and the prey of Wall Street, was gradually drawn in by the fascination of amassing wealth without labor, — stealthily and stealthily, through his agents and brokers, the ve, desponding operator was daily concluding his contracts

for the future delivery of stock at current prices. At last the hour had come. Erie was rising, Erie was scarce, the great bear had many contracts to fulfill, and where was he to find the stock? His victims were not kept long in suspense. Mr. Treasurer Drew laid his hands upon his collateral. In an instant the bonds for three millions were converted into an equivalent amount of capital stock, and fifty-eight thousand shares, dumped, as it were, by the cartload in Broad Street, made Erie as plenty as even Drew could desire. Before the astonished bulls could rally their faculties, the quotations had fallen from 95 to 50, and they realized that they were hopelessly entrapped.

The whole transaction, of course, was in no respect more creditable than any result, supposed to be one of chance or skill, which, in fact, is made to depend upon the sorting of a pack of cards, the dosing of a race horse, or the selling out of his powers by a "walkist." But the gambler, the patron of the turf, or the pedestrian represents, as a rule, himself alone, and his character is generally so well understood as to be a warning to all the world. The case of the treasurer of a great corporation is different. He occupies a fiduciary position. He is a trustee, — a guardian. Vast interests are confided to his care; every shareholder of the corporation is his ward; if it is a railroad, the community itself is his *cestui que trust*. But passing events, accumulating more thickly with every year, have thoroughly corrupted the public morals on this subject. A directorship in certain great corporations has come to be regarded as a situation in which to make a fortune, the possession of which is no longer dishonorable. The method of accumulation is both simple and safe. It consists in giving contracts as a trustee to one's self as an individual, or in speculating in the property of one's *cestui que trust*, or in using the funds confided to one's charge, as treasurer or otherwise, to gamble with the real owners of those funds for their own property, and that with cards packed in advance. The wards themselves expect their guardians to throw the dice against them for their own property, and are surprised, as well as gratified

if the dice are not loaded. These proceedings, too, are looked upon as hardly reprehensible, yet they strike at the very foundation of existing society. The theory of representation, whether in politics or in business, is of the essence of modern development. Our whole system rests upon the sanctity of the fiduciary relations. Whoever betrays them, a director of a railroad no less than a member of Congress or the trustee of an orphans' asylum, is the common enemy of every man, woman and child who lives under representative government. The unscrupulous director is far less entitled to mercy than the ordinary gambler, combining as he does the character of the traitor with the acts of the thief.

No acute moral sensibility on this point, however, has for some years troubled Wall Street, nor, indeed, the country at large. As a result of the transaction of 1866, Mr. Drew was looked upon as having effected a surprisingly clever operation, and he retired from the field hated, feared, wealthy, and admired. This episode of Wall Street history took its place as a brilliant success beside the famous Prairie du Chien and Harlem "corners," and, but for subsequent events, would soon have been forgotten. Its close connection, however, with more important though later incidents of Erie history seems likely to preserve its memory fresh. Great events were impending; a new man was looming up in the railroad world, introducing novel ideas and principles, and it could hardly be that the new and old would not come in conflict. Cornelius Vanderbilt, commonly known as Commodore Vanderbilt, was now developing his theory of the management of railroads.

Born in the year 1794, Vanderbilt was a somewhat older man than Drew. There are several points of resemblance in the early lives of the two men, and many points of curious contrast in their characters. Vanderbilt, like Drew, was born in very humble circumstances in the State of New York, and like him also received little education. He began life by ferrying passengers and produce from Staten Island to New York, laid the foundation of his great ~~not~~ navigation, and likewise, in

Street operators and of certain persons from Boston, who sustained for the occasion the novel character of railroad reformers. This party, it is needless to say, was as unscrupulous, and, as the result proved, as able as either of the others; it represented nothing but a raid made upon the Erie treasury in the interest of a thoroughly bankrupt New England corporation, of which its members had the control. The history of this corporation, known as the Boston, Hartford & Erie Railroad, — a projected feeder and connection of the Erie, — would be one curious to read, though very difficult to write. Its name was synonymous with bankruptcy, litigation, fraud, and failure. If the Erie was of doubtful repute in Wall Street, the Boston, Hartford & Erie had long been of worse than doubtful repute in State Street. Of late years, under able and persevering, if not scrupulous management, the bankrupt, moribund company had been slowly struggling into new life, and in the spring of 1867 it had obtained, under certain conditions, from the Commonwealth of Massachusetts, a subsidy in aid of the construction of its road. One of the conditions imposed obliged the corporation to raise a sum from other sources still larger than that granted by the State. Accordingly, those having the line in charge looked abroad for a victim, and fixed their eyes upon the Erie.

As the election day drew near, Erie was of course for sale. A controlling interest of stockholders stood ready to sell their proxies, with entire impartiality, to any of the three contending parties, or to any man who would pay the market price for them. Nay, more, the attorney of one of the contending parties, as it afterwards appeared, after an ineffectual effort to extort blackmail, actually sold the proxies of his principal to another of the contestants, and his doing so seemed to excite mirth rather than surprise. Meanwhile the representatives of the Eastern interest played their part to admiration. Taking advantage of some Wall Street complications just then existing between Vanderbilt and Drew, they induced the former to ally himself with them, and the latter saw that his defeat was inevitable. Even at this time the Vanderbilt party could have recourse, if necessary, to the courts, and :

an injunction had been prepared, setting forth the details of the "corner" of 1866. On the Sunday preceding the election Drew, in view of his impending defeat, called upon Vanderbilt. That gentleman, thereupon, very amicably read to him the legal documents prepared for his benefit; whereupon the ready treasurer at once turned about, and, having hitherto been hampering the Commodore by his bear operations, he now agreed to join hands with him in giving to the market a strong upward tendency. Meanwhile the other parties to the contest were not idle. At the same house, at a later hour in the day, Vanderbilt explained to the Eastern adventurers his new plan of operations, which included the continuance of Drew in his directorship. These gentlemen were puzzled, not to say confounded, by this sudden change of front. An explanation was demanded, some plain language followed, and the parties separated, leaving everything unsettled; but only to meet again at a later hour at the house of Drew. There Vanderbilt brought the new men to terms by proposing to Drew a bold *coup de main*, calculated to throw them entirely out of the direction. Before the parties separated that night a written agreement had been entered into, providing that, to save appearances, the new board should be elected without Drew, but that immediately thereafter a vacancy should be created, and Drew chosen to fill it. He was therefore to go in as one of two directors in the Vanderbilt interest, that gentleman's nephew, Mr. Work, being the other.

This programme was faithfully carried out, and on the 2d of October Wall Street was at once astonished, by the news of the defeat of the notorious leader of the bears, and bewildered by the immediate resignation of a member of the new board and the election of Drew in his place. Apparently he had given in his submission, the one obstacle to success was removed, and the ever-victorious Commodore had now but to close his fingers on his new prize. Virtual consolidation on the Vanderbilt interest seemed a foregone conclusion.

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The res^t : ~~was~~ now impending. Commodore Vander-
grasp Erie. Erie was to be

isolated and shut up within the limits of New York; it was to be given over, bound hand and foot, to the lord of the Central. To perfect this programme, the representatives of all the competing lines met, and a proposition was submitted to the Erie party looking to a practical consolidation on certain terms of the Pennsylvania Central, the Erie, and the New York Central, and a division among the contracting parties of all the earnings from the New York City travel. A new illustration was thus to be afforded, at the expense of the trade and travel to and from the heart of a continent, of George Stephenson's famous aphorism, that where combination is possible competition is impossible. The Erie party, however, represented that their road earned more than half of the fund of which they were to receive only one third. They remonstrated and proposed modifications, but their opponents were inexorable. The terms were too hard; the conference led to no result; a ruinous competition seemed impending as the alternative to a fierce war of doubtful issue. Both parties now retired to their camps, and mustered their forces in preparation for the first overt act of hostility. They had not long to wait.

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The first open hostilities took place on the 17th of February. For some time Wall Street had been agitated with forebodings of the coming hostilities, but not until that day was recourse had to the courts. Vanderbilt had two ends in view when he sought to avail himself of the processes of law. In the first place, Drew's long connection with Erie, and especially the unsettled transactions arising out of the famous corner of 1866, afforded admirable ground for annoying offensive operations; and, in the second place, these very proceedings, by throwing his opponent on the defensive, afforded an excellent cover for Vanderbilt's own transactions in Wall Street. It was essential to his success to corner Drew, but to corner Drew at all was not easy, and to corner him in Erie was difficult indeed. Very recent experiences, of which Vanderbilt was fully informed, no less than the memories of 1866, had fully warned the public how manifold and ingenious were the expedients through which the coming treasure

directors, and then creating stock and issuing it to themselves, in exchange, under the authority vested in them by law. The uncontradicted history of this transaction, as subsequently set forth on the very doubtful authority of a leading Erie director, affords, indeed, a most happy illustration of brilliant railroad financiering, whether true in this case or not. The road, it was stated, cost the purchasers, as financiers, some \$250,000; as proprietors, they then issued in its name bonds for two million dollars, payable to one of themselves, who now figured as trustee. This person, then, shifting his character, drew up, as counsel for both parties, a contract leasing this road to the Erie Railway for four hundred and ninety-nine years, the Erie agreeing to assume the bonds; reappearing in their original character of Erie directors, these gentlemen then ratified the lease, and thereafter it only remained for them to relapse into the rôle of financiers, and to divide the proceeds. All this was happily accomplished, and the Erie Railway lost and some one gained \$140,000 a year by the bargain. The skillful actors in this much shifting drama probably proceeded on the familiar theory that exchange is no robbery; and the expedient was certainly ingenious.

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It was not until the 3d of March, however, that any decisive action was taken by Judge Barnard on either of the petitions before him. Even then, that in the name of the Attorney-General was postponed for final hearing until the 10th of the month; but, on the application of Work, an injunction was issued restraining the Erie board from any new issue of capital stock, by conversion of bonds or otherwise, in addition to the 251,058 shares appearing in the previous reports of the road, and forbidding the guaranty by the Erie of the bonds of any connecting line of road. While this last provision of the order was calculated to furnish food for thought to the Boston party, matter for meditation was supplied to Mr. Drew by other clauses, which specially forbade him, his agents, attorneys, or brokers, to have any transactions in Erie, or fulfill any of his contracts already entered into, until he had returned to the company sixty-eight thousand shares of capital stock, alleged to be the number involved in the unsettled

transaction of 1866, and the more recent Buffalo, Bradford & Pittsburg exchange. A final hearing was fixed for the 10th of March on both injunctions.

Things certainly did not now promise well for Treasurer Drew and the bear party. Vanderbilt and the bulls seemed to arrange everything to meet their own views ; apparently they had but to ask and it was granted. If any virtue existed in the processes of law, if any authority was wielded by a New York court, it now seemed as if the very head of the bear faction must needs be converted into a bull in his own despite, and to his manifest ruin. He, in this hour of his trial, was to be forced by his triumphant opponent to make Erie scarce by returning into its treasury sixty-eight thousand shares, — one fourth of its whole capital stock of every description. So far from manufacturing fresh Erie and pouring it into the street, he was to be cornered by a writ, and forced to work his own ruin in obedience to an injunction. Appearances are, however, proverbially deceptive, and all depended on the assumption that some virtue did exist in the processes of law, and that some authority was wielded by a New York court. In spite of the threatening aspect of his affairs, it was very evident that the nerves of Mr. Drew and his associates were not seriously affected. Wall Street watched him with curiosity not unmingled with alarm ; for this was a conflict of Titans. Hedged all around with orders of the court, suspended, enjoined, and threatened with all manner of unheard-of processes, with Vanderbilt's wealth standing like a lion in his path, and all Wall Street ready to turn upon him and rend him, — in presence of all these accumulated terrors of the court room and of the exchange, the Speculative Director was not less speculative than was his wont. He seemed rushing on destruction. Day after day he pursued the same "short"¹ tactics ; contract after contract was put out for the future delivery of stock at current prices, and this, too, in the face of a continually rising market. Evidently he did not yet consider himself at the end of his resources.

¹ An operator is said to be "short" when he has agreed to deliver that which he has not got. He wagers, in fact, on a fall.

It was equally evident, however, that he had not much time to lose. It was now the 3d of March, and the anticipated "corner" might be looked for about the 10th. As usual, some light skirmishing took place as a prelude to the heavy shock of decisive battle. The Erie party very freely and openly expressed a decided lack of respect, and something approaching contempt, for the purity of that particular fragment of the judicial ermine which was supposed to adorn the person of Mr. Justice Barnard. They did not pretend to conceal their conviction that this magistrate was a piece of the Vanderbilt property, and they very plainly announced their intention of seeking for justice elsewhere. With this end in view they betook themselves to their own town of Binghamton, in the county of Broome, where they duly presented themselves before Mr. Justice Balcom, of the Supreme Court. The existing judicial system of New York divides the State into eight distinct districts, each of which has an independent Supreme Court of four judges, elected by the citizens of that district. The first district alone enjoys five judges, the fifth being the Judge Barnard already referred to. These local judges, however, are clothed with certain equity powers in actions commenced before them, which run throughout the State. As one subject of litigation, therefore, might affect many individuals, each of whom might initiate legal proceedings before any of the thirty-three judges; which judge again might forbid proceedings before any or all of the other judges, or issue a stay of proceedings in suits already commenced, and then proceed to make orders, to consolidate actions, and to issue process for contempt, -- it was not improbable that, sooner or later, strange and disgraceful conflicts of authority would arise, and that the law would fall into contempt. Such a system can, in fact, be sustained only so long as coördinate judges use the delicate powers of equity with a careful regard to private rights and the dignity of the law, and therefore, more than any which has ever been devised, it calls for a high average of learning, dignity, and personal character in the occupants of the bench. When, therefore, the ermine of the judge is flung into the kennel of party politics and becomes a part of the spoils of political victory; when by any

chance partisanship, brutality, and corruption become the qualities which especially recommend the successful aspirant to judicial honors, then the system described will be found to furnish peculiar facilities for the display of these characteristics.

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All this, however, was mere skirmishing, and now the decisive engagement was near at hand. The plans of the Erie ring were matured, and, if Commodore Vanderbilt wanted the stock of their road, they were prepared to let him have all he desired. As usual the Erie treasury was at this time deficient in funds. As usual, also, Daniel Drew stood ready to advance all the funds required, — on proper security. One kind of security, and only one, the company was disposed at this time to offer, — its convertible bonds under a pledge of conversion. The company could not issue stock outright, in any case, at less than par; its bonds bore interest and were useless on the street; an issue of convertible bonds was another name for an issue of stock to be sold at market rates. The treasurer readily agreed to find a purchaser, and, in fact, he himself stood just then in pressing need of some scores of thousands of shares. Already at the meeting of the Board of Directors, on the 19th of February, a very deceptive account of the condition of the road, jockeyed out of the general superintendent, had been read and made public; the increased depot facilities, the projected double track, and the everlasting steel rails, had been made to do vigorous duty; and the board had, in the vaguest and most general language conceivable, clothed the Executive Committee with full power in the premises. . . . Immediately after the Board of Directors adjourned a meeting of the Executive Committee was held, and a vote to issue at once convertible bonds for ten millions gave a meaning to the very ambiguous language of the directors' resolve; and thus, when apparently on the very threshold of his final triumph, this mighty mass of one hundred thousand shares of new stock was hanging like an avalanche over the head of Vanderbilt.

The Executive Committee had voted to sell the entire amount of these bonds at not less than 72½. Five millions were placed

upon the market at once, and Mr. Drew's broker became the purchaser, Mr. Drew giving him a written guaranty against loss, and being entitled to any profit. It was all done in ten minutes after the committee adjourned, — the bonds issued, their conversion into stock demanded and complied with, and certificates for fifty thousand shares deposited in the broker's safe, subject to the orders of Daniel Drew. There they remained until the 29th, when they were issued, on his requisition, to certain others of that gentleman's army of brokers, much as ammunition might be issued before a general engagement. Three days later came the Barnard injunction, and Erie suddenly rose in the market. Then it was determined to bring up the reserves and let the eager bulls have the other five millions. The history of this second issue was, in all respects, an episode worthy of Erie, and deserves minute relation. It was decided upon on the 3d, but before the bonds were converted Barnard's injunction had been served on every one connected with the Erie Road or with Daniel Drew. The 10th was the return day of the writ, but the Erie operators needed even less time for their deliberations. Monday, the 9th, was settled upon as the day upon which to defeat the impending "corner." The night of Saturday, the 7th, was a busy one in the Erie camp. While one set of counsel and clerks were preparing affidavits and prayers for strange writs and injunctions, the enjoined vice president of the road was busy at home signing certificates of stock, to be ready for instant use in case a modification of the injunction could be obtained, and another set of counsel was in immediate attendance on the leaders themselves. Mr. Groesbeck, the chief of the Drew brokers, being himself enjoined, secured elsewhere, after one or two failures, a purchaser of the bonds, and took him to the house of the Erie counsel, where Drew and other directors and brokers then were. There the terms of the nominal sale were agreed upon, and a contract was drawn up transferring the bonds to this man of straw, who in return gave Mr. Drew a full power of attorney to convert or otherwise dispose of the bonds, in the form of a promissory note for their purchase money. Mr. Groesbeck, meanwhile, with the fear

towards conversion had been taken; the certificates of stock were beyond the control of an injunction. During the afternoon of the same day the convertible bonds were found upon the secretary's desk, where they had been placed by Mr. Belden, the partner in business of Director James Fisk, Jr.; the certificates were next seen in Broad Street.

Before launching the bolt thus provided, the conspirators had considered it not unadvisable to cover their proceedings, if they could, with some form of law. This probably was looked upon as an idle ceremony, but it could do no harm; and perhaps their next step was dictated by what has been called "a decent respect for the opinions of mankind," combined with a profound contempt for judges and courts of law.

Early on the morning of the 9th Judge Gilbert, a highly respected magistrate of the Second Judicial District, residing in Brooklyn, was waited upon by one of the Erie counsel, who desired to initiate before him a new suit in the Erie litigation, — this time, in the name of the Saturday evening purchaser of bonds and maker of affidavits. A writ of *mandamus* was asked for. This writ clearly did not lie in such a case; the magistrate very properly declined to grant it, and the only wonder is that counsel should have applied for it. New counsel were then hurriedly summoned, and a new petition, in a fresh name, was presented. This petition was for an injunction, in the name of Belden, the partner of Mr. Fisk, and the documents then and there presented were probably as eloquent an exposure as could possibly have been penned of the lamentable condition into which the once honored judiciary of New York had fallen. The petition alleged that some time in February certain persons, among whom was especially named George G. Barnard, — the justice of the Supreme Court of the First District, — had entered into a combination to speculate in the stock of the Erie Railway, and to use the process of the courts for the purpose of aiding their speculation; "and that, in furtherance of the plans of this combination," the actions in *Work's* had been commenced before Barnard, who, the counsel was then issuing injunctions at the rate of half a dozen

It is impossible by any criticism to do justice to such audacity as this: the dumb silence of amazement is the only fitting commentary. Apparently, however, nothing that could be stated of his colleague across the river exceeded the belief of Judge Gilbert, for, after some trifling delays and a few objections on the part of the judge to the form of the desired order, the Erie counsel hurried away, and returned to New York with a new injunction, restraining all the parties to all the other suits from further proceedings, and from doing any acts in "furtherance of said conspiracy"; — in one paragraph ordering the Erie directors, except Work, to continue in the discharge of their duties, in direct defiance of the injunction of one judge, and in the next, with an equal disregard of another judge, forbidding the directors to desist from converting bonds into stock. Judge Gilbert having, a few hours before signing this wonderful order, refused to issue a writ of *mandamus*, it may be proper to add that the process of equity here resorted to, compelling the performance of various acts, is of recent invention, and is known as a "mandatory injunction."

All was now ready. The Drew party were enjoined in every direction. One magistrate had forbidden them to move, and another magistrate had ordered them not to stand still. If the Erie board held meetings and transacted business, it violated one injunction; if it abstained from doing so, it violated another. By the further conversion of bonds into stock pains and penalties would be incurred at the hands of Judge Barnard; the refusal to convert would be an act of disobedience to Judge Gilbert. Strategically considered, the position could not be improved, and Mr. Drew and his friends were not the men to let the golden moment escape them. At once, before a new injunction could be obtained, even in New York, fifty thousand shares of new Erie stock were flung upon the market. That day Erie was buoyant, — Vanderbilt was purchasing. His agents caught at the new stock as eagerly as at the old, and the whole of it was absorbed before its origin was suspected, and almost without a falter in

the truth

fresh certificates appeared, and that day opened at 80 and

risen rapidly to 83, while its rise even to par was predicted; suddenly it faltered, fell off, and then dropped suddenly to 71. Wall Street had never been subjected to a greater shock, and the market reeled to and fro like a drunken man between these giants, as they hurled about shares by the tens of thousands, and money by the million. When night put an end to the conflict, Erie stood at 78, the shock of battle was over, and the astonished brokers drew breath as they waited for the events of the morrow. The attempted "corner" was a failure, and Drew was victorious, — no doubt existed on that point. The question now was, could Vanderbilt sustain himself? In spite of all his wealth, must he not go down before his cunning opponent?

The morning of the 11th found the Erie leaders still transacting business at the office of the corporation in West Street. It would seem that these gentlemen, in spite of the glaring contempt for the process of the courts of which they had been guilty, had made no arrangements for an orderly retreat beyond the jurisdiction of the tribunals they had set at defiance. They were speedily roused from their real or affected tranquillity by trustworthy intelligence that processes for contempt were already issued against them, and that their only chance of escape from incarceration lay in precipitate flight. At ten o'clock the astonished police saw a throng of panic-stricken railway directors, — looking more like a frightened gang of thieves, disturbed in the division of their plunder, than like the wealthy representatives of a great corporation, — rush headlong from the doors of the Erie office, and dash off in the direction of the Jersey ferry. In their hands were packages and files of papers, and their pockets were crammed with assets and securities. One individual bore away with him in a hackney coach bales containing six millions of dollars in greenbacks. Other members of the board followed under cover of the night; some of them, not daring to expose themselves to the publicity of a ferry, attempted to cross in open boats concealed by the darkness and a March fog. The directors, who lingered, were arrested; but a majority of Executive Committee collected at the Erie Station

City, and there, free from any apprehension of Judge Barnard's pursuing wrath, proceeded to the transaction of business.

Meanwhile, on the other side of the river, Vanderbilt was struggling in the toils. As usual in these Wall Street operations, there was a grim humor in the situation. Had Vanderbilt failed to sustain the market, a financial collapse and panic must have ensued which would have sent him to the wall. He had sustained it, and had absorbed a hundred thousand shares of Erie. Thus when Drew retired to Jersey City he carried with him seven millions of his opponent's money, and the Commodore had freely supplied the enemy with the sinews of war. He had grasped at Erie for his own sake, and now his opponents derisively promised to rehabilitate and vivify the old road with the money he had furnished them, so as more effectually to compete with the lines which he already possessed. Nor was this all. Had they done as they loudly claimed they meant to do, Vanderbilt might have hugged himself in the faith that, after all, it was but a question of time, and the prize would come to him in the end. He, however, knew well enough that the most pressing need of the Erie people was money with which to fight him. With this he had now furnished them abundantly, and he must have felt that no scruples would prevent their use of it.

Vanderbilt had, however, little leisure to devote to the enjoyment of the humorous side of his position. The situation was alarming. His opponents had carried with them in their flight seven millions in currency, which were withdrawn from circulation. An artificial stringency was thus created in Wall Street, and, while money rose, stocks fell, and unusual margins were called in. Vanderbilt was carrying a fearful load, and the least want of confidence, the faintest sign of faltering, might well bring on a crash. He already had a hundred thousand shares of Erie, not one of which he could sell. He was liable at any time to be called upon to carry as much more as his opponents, skilled by long practice in the manufacture of the article, might see fit to produce. Opposed to him were men who scrupled at nothing, and who knew every in and out of the money market. With every look and every gesture anxiously scrutinized, a

position more trying than his can hardly be conceived. It is ~~not~~ known from what source he drew the vast sums which enabled him to surmount his difficulties with such apparent ease. His nerve, however, stood him in at least as good stead as his financial resources. Like a great general, in the hour of trial he inspired confidence. While fighting for life he could "talk horse" and play whist. The manner in which he then emerged from his troubles, serene and confident, was as extraordinary as the financial resources he commanded.

Meanwhile, before turning to the tide of battle, which now swept away from the courts of law into the halls of legislation, there are two matters to be disposed of; the division of the spoils is to be recounted, and the old and useless lumber of conflict must be cleared away. The division of profits accruing to Mr. Treasurer Drew and his associate directors, acting as individuals, was a fit conclusion to the stock issue just described. The bonds for five millions, after their conversion, realized nearly four millions of dollars, of which \$3,625,000 passed into the treasury of the company. The trustees of the stockholders had therefore in this case secured a profit for some one of \$375,000. Confidence in the good faith of one's kind is very commendable, but possession is nine points of the law. Mr. James Fisk, Jr., through whom the sales were mainly effected, declined to make any payments in excess of the \$3,625,000, until a division of profits was agreed upon. It seems that, by virtue of a paper signed by Mr. Drew as early as the 19th of February, Gould, Fisk, and others were entitled to one half the profits he should make "in certain transactions." What these transactions were, or whether the official action of Directors Gould and Fisk was in any way influenced by the signing of this document, does not appear. Mr. Fisk now gave Mr. Drew, in lieu of cash, his uncertified check for the surplus \$375,000 remaining from this transaction, with stock as collateral amounting to about the half of that sum. With this settlement, and the redemption of the collateral, Mr. Drew was fain to be content. Seven months afterwards he still retained possession of the ~~uncertified~~ check in the payment of which, if presented, he ~~seemed~~

no great confidence. Everything, however, showed conclusively the advantage of operating from interior lines. While the Erie treasury was once more replete, three of the persons who had been mainly instrumental in filling it had not suffered in the transaction. The treasurer was richer by \$180,000 directly, and he himself only knew by how much more incidentally. In like manner his faithful adjutants had profited to an amount as much exceeding \$60,000 each as their sagacity had led them to provide for.

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When the Vanderbilt counsel moved to fix a day on which their opponents should show cause why a receiver of the proceeds of the last overissue of stock should not be appointed, the judge astonished the petitioners by outstripping their eagerness, and appointing Vanderbilt's own son-in-law receiver on the spot. Then followed a fierce altercation in court, in which bench and bar took equal part, and which closed with the not unusual threat of impeaching the presiding judge. . . . When Mr. John B. Haskin was placed upon the stand, there ensued a scene which Barnard himself not inaptly characterized the next day as "outrageous and scandalous, and insulting to the court." Upon this occasion the late Mr. James T. Brady seemed to be on the verge of a personal collision with the witness in open court; the purity of the presiding magistrate was impugned, his venality openly implied through a long cross-examination, and the witness acknowledged that he had himself in the course of his career undertaken for money to influence the mind of the judge privately "on the side of right." All the scandals of the practice of the law, and the private immoralities of lawyers, were dragged into the broad light of day; the whole system of favored counsel, of private argument, of referees, and of unblushing extortion, was freely discussed. . . . On a subsequent day the judge himself made inquiries as to a visit of two of the directors to one gentleman supposed to have peculiar influence over the judicial mind, and evinced great familiarity with the ~~rotati~~ ^{ried} on, and even showed some disposition ^{initely} into periodical literature. . . .

Kent had once presided. His great authority was still cited there, the halo which surrounds his name still shed a glory over the bench on which he had sat, and yet these, his immediate successors, could

On that high mountain cease to feed,
And batten on this moor.

II

It is now necessary to return to the real field of operations, which had ceased on the morning of the 11th of March to be in the courts of law. As the arena widened the proceedings became more complicated and more difficult to trace, embracing as they did the legislatures of two States, neither of them famed for purity. In the first shock of the catastrophe it was actually believed that Commodore Vanderbilt contemplated a resort to open violence and acts of private war. There were intimations that a scheme had been matured for kidnapping certain of the Erie directors, including Mr. Drew, and bringing them by force within reach of Judge Barnard's process. It appeared that on the 16th of March some fifty individuals, subsequently described, in an affidavit filed for the special benefit of Mr. Justice Barnard, as "disorderly characters, commonly known as roughs," crossed by the Pavonia Ferry and took possession of the Erie depot. From their conversation and inquiries it was divined that they came intending to "copp" Mr. Drew, or, in plainer phraseology, to take him by force to New York; and that they expected to receive the sum of \$50,000 as a reward for so doing. The exiles at once loudly charged Vanderbilt himself with originating this blundering scheme. They simulated intense alarm. From day to day new panics were started, until, on the 19th, Drew was secreted, a standing army was organized from the employees of the road, and a small navy equipped. The alarm spread through Jersey City; the militia was held in readiness; in the evening the stores were closed and the citizens began to arm; while a garrison of about one hundred and twenty-five men intrenched themselves around the directors, in their hotel. On the 2

there was another alarm, and the fears of an attack continued, with lengthening intervals of quiet, until the 31st, when the guard was at last withdrawn. It is impossible to suppose that Vanderbilt ever had any knowledge of this ridiculous episode or of its cause, except through the press. A band of ruffians may have crossed the ferry, intending to kidnap Drew on speculation; but to suppose that the shrewd and energetic Commodore ever sent them to go gaping about a station, ignorant both of the person and the whereabouts of him they sought would be to impute to Vanderbilt at once a crime and a blunder. Such botching bears no trace of his clean handiwork.

The first serious effort of the Erie party was to intrench itself in New Jersey; and here it met with no opposition. A bill making the Erie Railway Company a corporation of New Jersey, with the same powers they enjoyed in New York, was hurried through the legislature in the space of two hours, and, after a little delay, signed by the Governor. The astonished citizens of the latter State saw their famous broad-gauge road thus metamorphosed before their eyes into a denizen of the kingdom of Camden and Amboy. Here was another dreadful hint to Wall Street. What further issues of stock might become legal under this charter, how the tenure of the present Board of Directors might be altered, what curious legal complications might arise, were questions more easily put than satisfactorily answered. The region of possibilities was considerably extended. The new act of incorporation, however, was but a precaution to secure for the directors of the Erie a retreat in case of need; the real field of conflict lay in the legislature of New York, and here Vanderbilt was first on the ground.

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One favorite method of procedure at Albany is through the appointment of committees to investigate the affairs of wealthy corporations. The stock of some great company is manipulated till it fluctuates violently, as was the case with Pacific Mail in 1867. Forthwith some member of the Assembly rises and calls for a committee of investigation. The instant the game is afoot, a rush is made for the committee. The

of private inquiry which involved further visits to Jersey City. Naturally enough, Mr. Drew and his associates took it into their heads that the man wanted to be bought, and even affirmed subsequently that, at one interview, he had in pretty broad terms offered himself for sale. It has not been distinctly stated in evidence by any one that an attempt was made on his purity or on that of his public-spirited son; and it is difficult to believe that one who came to New York so full of high purpose could have been sufficiently corrupted by metropolitan influences to receive bribes from both sides. Whether he did so or not his proceedings were terribly suggestive as regards legislative morality at Albany. Here was a senator, a member of a committee of investigation, rousing gamblers from their beds at early hours of the morning to hold interviews in the faro-bank parlor of the establishment, and to give "points" on which to operate upon the joint account. Even then the wretched creature could not even keep faith with his very "pals"; he wrote to them to "go it heavy" for Drew, and then himself went over to Vanderbilt,—he made agreements to share profits and then submitted to exposure sooner than meet his part of the loss. A man more thoroughly, shamefacedly contemptible and corrupt,—a more perfect specimen of a legislator on sale haggling for his own price, could not well exist. In this case he cheated every one, including himself. Accident threw great opportunities in his way. On the 31st the draft of a proposed report, exonerating in great measure the Drew faction, was read to him by an associate, to which he not only made no objection, but was even understood to assent. On the same day another report was read in his presence, strongly denouncing the Drew faction, sustaining to the fullest extent the charges made against it, and characterizing its conduct as corrupt and disgraceful. Each report was signed by two of his associates, and Mr. Mattoon found himself in the position of holding the balance of power; whichever report he signed would be the report of the committee. He expressed a desire to think the matter over. It is natural to suppose that, in his eagerness to gain information privately, Mr. Mattoon had not confined his unofficial visits to the Drew camp.

is reported to have received \$100,000 from one side "to influence legislation," and to have subsequently received \$70,000 from the other side to disappear with the money; which he accordingly did, and thereafter became a gentleman of elegant leisure. One senator was openly charged in the columns of the press with receiving a bribe of \$20,000 from one side, and a second bribe of \$15,000 from the other; but Mr. Gould's foggy mental condition only enabled him to be "perfectly astounded" at the action of this senator, though he knew nothing of any such transactions. Other senators were blessed with a sudden accession of wealth, but in no case was there any jot or tittle of proof of bribery. Mr. Gould's rooms at the Develin House overflowed with a joyous company, and his checks were numerous and heavy; but why he signed them, or what became of them, he seemed to know less than any man in Albany. This strange and expensive hallucination lasted until about the middle of April, when Mr. Gould was happily restored to his normal condition of a shrewd, acute, energetic man of business; nor is it known that he has since experienced any relapse into financial idiocy.

About the period of Mr. Gould's arrival in Albany the tide turned, and soon began to flow strongly in favor of Erie and against Vanderbilt. How much of this was due to the skillful manipulations of Gould, and how much to the rising popular feeling against the practical consolidation of competing lines, cannot be decided. The popular protests did indeed pour in by scores, but then again the Erie secret-service money poured out like water. Yet Mr. Gould's task was sufficiently difficult. After the adverse report of the Senate Committee, and the decisive defeat of the bill introduced into the Assembly, any favorable legislation seemed almost hopeless. Both Houses were committed. Vanderbilt had but to prevent action, — to keep things where they were, and the return of his opponents to New York was impracticable, unless with his consent; he appeared, in fact, to be absolute master of the situation. It seemed almost impossible to introduce a bill in the face of his great influence, and to navigate it through the many stages

of legislative action and executive approval, without somewhere giving him an opportunity to defeat it. This was the task Gould had before him, and he accomplished it. On the 13th of April a bill, which met the approval of the Erie party, and which Judge Barnard subsequently compared not inaptly to a bill legalizing counterfeit money, was taken up in the Senate; for some days it was warmly debated, and on the 18th was passed by the decisive vote of seventeen to twelve. Senator Mattoon had not listened to the debate in vain. Perhaps his reason was convinced, or perhaps he had sold out new "points" and was again cheating himself or somebody else; at any rate, that thrifty senator was found voting with the majority. The bill practically legalized the recent issues of bonds, but made it a felony to use the proceeds of the sale of these bonds except for completing, furthering, and operating the road. The guaranty of the bonds of connecting roads was authorized, all contracts for consolidation or division of receipts between the Erie and the Vanderbilt roads were forbidden, and a clumsy provision was enacted that no stockholder, director, or officer in one of the Vanderbilt roads should be an officer or director in the Erie, and *vice versa*. The bill was, in fact, an amended copy of the one voted down so decisively in the Assembly a few days before, and it was in this body that the tug of war was expected to come.

The lobby was now full of animation; fabulous stories were told of the amounts which the contending parties were willing to expend; never before had the market quotations of votes and influence stood so high. The wealth of Vanderbilt seemed pitted against the Erie treasury, and the vultures flocked to Albany from every part of the State. Suddenly, at the very last moment, and even while special trains were bringing up fresh contestants to take part in the fray, a rumor ran through Albany as of some great public disaster, spreading panic and terror through hotel and corridor. The observer was reminded of the dark days of the war, when tidings came of some great defeat, as that on the Chickahominy or at Fredericksburg. In a moment the lobby was smitten with despair, and the cheeks

should intervene between the payment of the bribe and the signing of the law.¹

Practically, the conflict was now over, and the period of negotiation had already begun. The combat in the courts was indeed kept up until far into May, for the angry passions of the lawyers and of the judges required time in which to wear themselves out. Day after day the columns of the press revealed fresh scandals to the astonished public, which at last grew indifferent to such revelations. Beneath all the wrangling of the courts, however, while the popular attention was distracted by the clatter of lawyers' tongues, the leaders in the controversy were quietly approaching a settlement.

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At last, upon the 2d of July, Mr. Eldridge formally announced to the Board of Directors that the terms of peace had been agreed upon. Commodore Vanderbilt was, in the first place, provided for. He was to be relieved of fifty thousand shares of Erie stock at 70, receiving therefor \$2,500,000 in cash, and \$1,250,000 in bonds of the Boston, Hartford & Erie at 80. He was also to receive a further sum of \$1,000,000 outright, as a consideration for the privilege the Erie road thus purchased of calling upon him for his remaining fifty thousand shares at 70 at any time within four months. He was also to have two seats in the Board of Directors, and all suits were to be dismissed and offenses condoned. The sum of \$4,250,000 was fixed upon as a proper amount to assuage the sense of wrong from which his two friends Work and Schell had suffered, and to efface from their memories all recollection of the unfortunate "pool" of the previous December. Why the owners of the Erie Railway should have paid this indemnity of \$4,250,000 is not very clear. The operations were apparently outside of the business of a railway company, and no more connected with

¹ It is but justice to Governor Fenton to say that during the whole time he boldly advanced by respectable journals of the day, and was everywhere regarded as sustained by the evidence. The testimony of the grand jury is given in the report of Senator Hunt's investigating committee, *Interstate Commerce*, 1880, No. 2, pp. 146-148, 151-154.

the stockholders of the Erie than were the butchers' bills of the individual directors.

While Vanderbilt and his friends were thus provided for, Mr. Drew was to be left in undisturbed enjoyment of the fruits of his recent operations, but was to pay into the treasury \$540,000 and interest, in full discharge of all claims and causes of action which the Erie company might have against him. The Boston party, as represented by Mr. Eldridge, was to be relieved of \$5,000,000 of their Boston, Hartford & Erie bonds, for which they were to receive \$4,000,000 of Erie acceptances. None of these parties, therefore, had anything to complain of, whatever might be the sensations of the real owners of the railway. A total amount of some \$9,000,000 in cash was drawn from the treasury in fulfillment of this *settlement*, as the persons concerned were pleased to term this remarkable disposition of property intrusted to their care.


Messrs. Gould and Fisk still remained to be taken care of, and to them their associates left — the Erie Railway. These gentlemen subsequently maintained that they had vehemently opposed this settlement, and had denounced it in the secret councils as a fraud and a robbery. Mr. Fisk was peculiarly outspoken in relation to it, and declared himself "thunder-struck and dumfounded" that his brother directors whom he had supposed respectable men should have had anything to do with any such proceeding. A small portion of this statement is not wholly improbable. The astonishment at the turpitude of his fellow-officials was a little unnecessary in one who had already seen "more robbery" during the year of his connection with the Erie Railway than he had "ever seen before in the same space of time," — so much of it indeed that he dated his "gray hairs" from that 7th of October which saw his election to the board. That Mr. Fisk and Mr. Gould were extremely indignant at a partition of plunder from which they were excluded is, however, very certain. The rind of the orange is not generally considered the richest part of the fruit; a corporation on the verge of bankruptcy is less coveted, even by operators in Wall Street, than one rich in valuable assets.

Probably at this time these gentlemen seriously debated the expediency of resorting again to a war of injunctions, and carefully kept open a way for doing so; however this may have been, they seem finally to have concluded that there was yet plunder left in the poor old hulk, and so, after four stormy interviews, all opposition was at last withdrawn and the definitive treaty was finally signed. . . . Mr. Eldridge thereupon counted out his bonds and received his acceptances, which latter were cashed at once to close up the transaction, and at once he resigned his positions as director and president. The Boston raiders then retired, heavy with spoil, into their own North country, and there proceeded to build up an Erie influence for New England, in which task they labored with assiduity and success. Gradually they here introduced the more highly developed civilization of the land of their temporary adoption and boldly attempted to make good their private losses from the public treasury. A more barefaced scheme of plunder never was devised, and yet the executive veto alone stood between it and success. These, however, were the events of another year and unconnected with this narrative, from which these characters in the Erie management henceforth disappear. For the rest it is only necessary to say that Mr. Vanderbilt, relieved of his heavy load of its stock, apparently ceased to concern himself with Erie; while Daniel Drew, released from the anxieties of office, assumed for a space the novel character of a looker-on in Wall Street.

III

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The appearance of calm lasted but about thirty days. Early in August it was evident that something was going on. Erie suddenly fell ten per cent; in a few days more it experienced a further fall of seven per cent, touching 44 by the 19th of the month, upon which day, to the astonishment of Wall Street, the transfer books of the company were closed preparatory to the annual election. As this election was not to take place until the 13th of October, and as the books had thus been



view of procuring such information as they might be willing to impart. The committee called on Mr. Gould and stated the object of their visit. In reply to their inquiries Mr. Gould informed them that Erie convertible bonds for ten millions of dollars had been issued, half of which had already been, and the rest of which would be, converted into stock; that the money had been devoted to the purchase of Boston, Hartford & Erie bonds for five millions, and also — of course — to payments for steel rails. The committee desired to know if any further issue of stock was in contemplation, but were obliged to rest satisfied with a calm assurance that no new issue was just then contemplated except "in certain contingencies;" from which enigmatical utterances Wall Street was left to infer that the exigencies of Messrs. Gould and Fisk were elements not to be omitted from any calculations as to the future of Erie and the money market. The amount of these issues of new stock was, of course, soon whispered in a general way; but it was not till months afterwards that a sworn statement of the secretary of the Erie Railway revealed the fact that the stock of the corporation had been increased from \$34,265,300 on the 1st of July, 1868, the date when Drew and his associates had left it, to \$57,766,300 on the 24th of October of the same year, or by two hundred and thirty-five thousand shares in four months.¹ This, too, had been done without consultation with the board of directors, and with no other authority than that conferred by the ambiguous resolution of February 19th. Under that resolution the stock of the company had now been increased one hundred and thirty-eight per cent in eight months. Such a process of inflation may, perhaps, be justly considered the most extraordinary feat of financial legerdemain which history has yet recorded.

¹ In April, 1871, although the stock was then nominally registered, a further secret issue was made by which some \$600,000 in cash was realized on \$3,000,000 of stock. Periodical issues had then carried the gross amount up to the neighborhood of \$86,500,000; or from a total of 250,000 shares, when the management changed at the election of October 17, 1867, to 865,000 shares within four years. Apparently Mr. Fisk was more correct than usual in his statement, when he remarked, that, having once joined the robbers, "he had been with them ever since."

Now, however, when the committee of the Stock Exchange had returned to those who sent them, the mask was thrown off, and operations were conducted with vigor and determination. New issues of Erie were continually forced upon the market until the stock fell to 35; greenbacks were locked up in the vaults of the banks, until the unexampled sum of twelve millions was withdrawn from circulation; the prices of securities and merchandise declined; trade and the autumnal movement of the crops were brought almost to a standstill; and loans became more and more difficult to negotiate, until at length even one and a half per cent a day was paid for carrying stocks. Behind all this it was notorious that some one was pulling the wires, the slightest touch upon which sent a quiver through every nerve of the great financial organism, and wrung private gain from public agony. . . . The very revenues of the government were affected by the operations of gamblers. They were therefore informed that, if necessary, fifty millions of additional currency would be forthcoming to the relief of the community, and then, and not till then, the screws were loosened.

The harvest of the speculators, however, was still but half gathered. Hitherto the combination had operated for a fall. Now was the moment to change the tactics and take advantage of the rise. The time was calculated to a nicety. The London infatuation had wonderfully continued, and as fast as certificates of stock were issued they seemed to take wings across the Atlantic. Yet there was a limit even to English credulity, and in November it became evident that the agents of foreign houses were selling their stock to arrive. The price was about 40; the certificates might be expected by the steamer of the 23d. Instantly the combination changed front. As before they had depressed the market, they now ran it up, and, almost as if by magic, the stock, which had been heavy at 40, astonished every one by shooting up to 50. New developments were evidently at hand.

At this point Mr. Daniel Drew once more made his appearance on the stage. As was very natural, he had soon wearied of the sameness of his part as a mere looker-on in Wall Street, and had

But to return to the course of events. With the lords of Erie overawed was forearmed. They knew something of the method of procedure in New York courts of law. At this particular juncture Mr. Justice Sutherland, a magistrate of such pure character and unsullied reputation that it is inexplicable how he ever came to be elevated to the bench on which he sits, was holding chambers, according to assignment, for the four weeks between the first Monday in November and the first Monday in December. By a rule of the court, all applications for orders during that time were to be made before him, and he only, according to the courtesy of the Bench, took cognizance of such proceedings. Some general arrangement of this nature is manifestly necessary to avoid continual conflicts of jurisdiction. The details of the assault on the Erie directors having been settled, counsel appeared before Judge Sutherland on Monday morning and petitioned for an injunction restraining the Erie directors from any new issue of stock or the removal of the funds of the company beyond the jurisdiction of the court, and also asking that the road be placed in the hands of a receiver. The suit was brought in the name of Mr. August Belmont, who was supposed to represent large foreign holders. The petition set forth at length the alleged facts in the case, and was supported by the affidavits of Mr. Drew and others. Mr. Drew apparently did not inform the counsel of the manner in which he had passed his leisure hours on the previous day; had he done so, Mr. Belmont's counsel probably would have expedited their movements. The injunction was, however, duly signed, and, doubtless, immediately served.

Meanwhile Messrs. Gould and Fisk had not been idle. Applications for injunctions and receiverships were a game which they could play at, and long experience had taught these close observers the very great value of the initiative in law. Accordingly, some two hours before the Belmont application was made, they had sought no less a person than Mr. Justice Barnard, sought him, as it were, either in his bed or at his breakfast, whereupon he had held a *lit de justice*, and made divers astonishing orders. A petition was presented in the name of one

McIntosh, a salaried officer of the Erie Road, who claimed also to be a shareholder. It set forth the danger of injunctions and of the appointment of a receiver, the great injury likely to result therefrom, etc. After due consideration on the part of Judge Barnard, an injunction was issued, staying and restraining all suits, and actually appointing Jay Gould receiver, to hold and disburse the funds of the company in accordance with the resolutions of the Board of Directors and the Executive Committee. This certainly was a very brilliant flank movement, and testified not less emphatically to Gould's genius than to Barnard's law; but most of all did it testify to the efficacy of the new combination between Tammany Hall and the Erie Railway. Since the passage of the bill "to legalize counterfeit money," in April, and the present November, new light had burst upon the judicial mind, and as the news of one injunction and a vague rumor of the other crept through Wall Street that day, it was no wonder that operators stood aghast and that Erie fluctuated wildly from 50 to 61 and back to 48.

The Erie directors, however, did not rest satisfied with the position which they had won through Judge Barnard's order. That simply placed them, as it were, in a strong defensive attitude. They were not the men to stop there: they aspired to nothing less than a vigorous offensive. With a superb audacity, which excites admiration, the new trustee immediately filed a supplementary petition. Therein it was duly set forth that doubts had been raised as to the legality of the recent issue of some two hundred thousand shares of stock, and that only about this amount was to be had in America; the trustee therefore petitioned for authority to use the funds of the corporation to purchase and cancel the whole of this amount at any price less than the par value, without regard to the rate at which it had been issued. The desired authority was conferred by Mr. Justice Barnard as soon as asked. Human assurance could go no further. The petitioners had issued these shares in the bear interest at 40, and had run down the value of Erie to 35; they had then turned round, and were now empowered to buy back that very stock in the bull interest, and in the name and with

a half of dollars. The Erie directors were not the fortunate men, for their only trophies were great piles of certificates of Erie stock, which had cost them "corner" prices, and for which no demand existed. If Drew's loss was a million and a half, their loss was likely to be nearer three millions. Who, then, were the recipients of these missing millions? There is an ancient saying, which seems to have been tolerably verified in this case, that when certain persons fall out certain other persons come by their dues. The "corner" was very beautiful in all its details, and most admirably planned; but, unfortunately, those who engineered it had just previously made the volume of stock too large for accurate calculation. For once the outside public had been at hand and Wall Street had been found wanting. A large portion of the vast sum taken from the combatants found its way into the pockets of the agents of English bankers, and a part of it was accounted for by them to their principals; another portion went to relieve anxious holders among the American outside public; the remainder fell to professional operators, probably far more lucky than sagacious. Still, there had been a fall before there was a rise. The subsequent disaster, perhaps, no more than counterbalanced the earlier victory; at any rate, Messrs. Gould and Fisk did not succumb, but preserved a steady front, and Erie was more upon the street than ever. In fact, it was wholly there now. The recent operations had proved too outrageous even for the Brokers' Board. A new rule was passed, that no stock should be called, the issues of which were not registered at some respectable banking-house. The Erie directors declined to conform to this rule, and their road was stricken from the list of calls. Nothing daunted at this, these Protean creatures at once organized a new board of their own, and so far succeeded in their efforts as to have Erie quoted and bought and sold as regularly as ever.

Though the catastrophe had taken place on the 19th, the struggle was not yet over. The interests involved were so enormous, the developments so astounding, such passions had been aroused, that some safety valve through which suppressed

wrath could work itself off was absolutely necessary, and this the courts of law afforded. The attack was stimulated by various motives. The *bona fide* holders of the stock, especially the foreign holders, were alarmed for the existence of their property. The Erie ring had now boldly taken the position that their duty was, not to manage the road in the interests of its owners, not to make it a dividend-paying corporation, but to preserve it from consolidation with the Vanderbilt monopoly. This policy was openly proclaimed by Mr. Gould, at a later day, before an investigating committee at Albany. With unspeakable effrontery, — an effrontery so great as actually to impose on his audience and a portion of the press, and make them believe that the public ought to wish him success, — he described how stock issues at the proper time, to any required amount, could alone keep him in control of the road, and keep Mr. Vanderbilt out of it; it would be his duty, therefore, he argued, to issue as much new stock, at about the time of the annual election, as would suffice to keep a majority of all the stock in existence under his control; and he declared that he meant to do this. . . . The strangest thing of all was, that it never seemed to occur to his audience that the propounder of this comical sophistry was a trustee and guardian for the stockholders, and not a public benefactor; and that the owners of the Erie Road might possibly prefer not to be deprived of their property, in order to secure the blessing of competition. So unique a method of securing a reëlection was probably never before suggested with a grave face, and yet, if we may believe the reporters, Mr. Gould, in developing it, produced a very favorable impression on the committee. It was hardly to be expected that such advanced views as to the duties and powers of railway directors would favorably impress commonplace individuals who might not care to have their property scaled down to meet Mr. Gould's views of public welfare. These persons accordingly, popularly supposed to be represented by Mr. Belmont, wished to get their property out of the hands of such fanatics in the cause of cheap transportation and plentiful stock, with the least possible delay. Combined with these were the operators who had suffered in the late

it aside, that a *prima facie* case, for the appointment of a receiver "was supposed to have been made out," that no objection to the person suggested was made, and that the right was expressly reserved to other parties to come into court, with any allegations they saw fit against Receiver Gould. The collusion in the case was, nevertheless, so evident, the facts were so notorious and so apparent from the very papers before the court, and the character of Judge Blatchford is so far above suspicion, that it is hard to believe that this order was not procured from him by surprise, or through the agency of some counsel in whom he reposed a misplaced confidence. The Erie ring, at least, had no occasion to be dissatisfied with this day's proceedings.

The next day Judge Sutherland made short work of his brother Barnard's stay of proceedings in regard to the Davies receivership. He vacated it at once, and incontinently proceeded, wholly ignoring the action of Judge Blatchford on the day before, to settle the terms of the order, which, covering as it did the whole of the Erie property and franchise, excepting only the operating of the road, bade fair to lead to a conflict of jurisdiction between the State and Federal courts.

And now a new judicial combatant appears in the arena. It is difficult to say why Judge Barnard, at this time, disappears from the narrative. Perhaps the notorious judicial violence of the man, which must have made his eagerness as dangerous to the cause he espoused as the eagerness of a too swift witness, had alarmed the Erie counsel. Perhaps the fact that Judge Sutherland's term in chambers would expire in a few days had made them wish to intrust their cause to the magistrate who was to succeed him. At any rate, the new order staying proceedings under Judge Sutherland's order was obtained from Judge Cardozo, — it is said, somewhat before the terms of the receivership had been finally settled. The change spoke well for the discrimination of those who made it, for Judge Cardozo is a very different man from Judge Barnard. Courteous but inflexible, subtle, clear-headed, and unscrupulous, this magistrate conceals the iron hand beneath the silken glove. Equally versed in the laws of New York and in the mysteries of

Tammany, he had earned his place by a partisan decision on the excise law, and was nominated for the bench by Mr. Fernando Wood, in a few remarks concluding as follows: "Judges were often called on to decide on political questions, and he was sorry to say the majority of them decided according to their political bias. It was therefore absolutely necessary to look to their candidate's political principles. He would nominate, as a fit man for the office of Judge of the Supreme Court, Albert Cardozo." Nominated as a partisan, a partisan Cardozo has always been, when the occasion demanded. Such was the new and far more formidable champion who now confronted Sutherland, in place of the vulgar Barnard. His first order in the matter—to show cause why the order of his brother judge should not be set aside—was not returnable until the 30th, and in the intervening five days many events were to happen.

Immediately after the settlement by Judge Sutherland of the order appointing Judge Davies receiver, that gentleman had proceeded to take possession of his trust. Upon arriving at the Erie building, he found it converted into a fortress, with a sentry patrolling behind the bolts and bars, to whom was confided the duty of scrutinizing all comers, and of admitting none but the faithful allies of the garrison. It so happened that Mr. Davies, himself unknown to the custodian, was accompanied by Mr. Eaton, the former attorney of the Erie corporation. This gentleman was recognized by the sentry, and forthwith the gates flew open for himself and his companion. In a few moments more the new receiver astonished Messrs. Gould and Fisk, and certain legal gentlemen with whom they happened to be in conference, by suddenly appearing in the midst of them. The apparition was not agreeable. Mr. Fisk, however, with a fair appearance of cordiality, welcomed the strangers, and shortly after left the room. Speedily returning, his manner underwent a change, and he requested the newcomers to go the way they came. As they did not comply at once, he opened the door, and directed their attention to some dozen men of forbidding aspect who stood outside, and who, he intimated, were prepared to eject them forcibly if they sought to prolong their unwelcome

curious resemblance to certain of his performances in the notorious case of the Wood leases, and made the plan of operations perfectly clear. The period during which Judge Sutherland was to sit in chambers was to expire on the 4th of December, and Cardozo himself was to succeed him; he now, therefore, proposed to signalize his associate's departure from chambers by reviewing his orders. No sooner had he granted the motion, than the opposing counsel applied to Judge Sutherland, who forthwith issued an order to show cause why the reargument ordered by Judge Cardozo should not take place at once. Upon which the counsel of the Erie Road instantly ran over to Judge Cardozo, who vacated Judge Sutherland's order out of hand. The lawyers then left him and ran back to Judge Sutherland with a motion to vacate this last order. The contest was now becoming altogether too ludicrous. Somebody must yield, and when it was reduced to that, the honest Sutherland was pretty sure to give way to the subtle Cardozo. Accordingly the hearing on this last motion was postponed until the next morning, when Judge Sutherland made a not undignified statement as to his position, and closed by remitting the whole subject to the succeeding Monday, at which time Judge Cardozo was to succeed him in chambers. Cardozo, therefore, was now in undisputed possession of the field.

* * * * *

It was now very clear that Receiver Davies might abandon all hope of operating the Erie Railway, and that Messrs. Gould and Fisk were borne upon the swelling tide of victory. The prosperous aspect of their affairs encouraged these last-named gentlemen to yet more vigorous offensive operations. The next attack was upon Vanderbilt in person. On Saturday, the 5th of December, only two days after Judge Sutherland and Receiver Davies were disposed of, the indefatigable Fisk waited on Commodore Vanderbilt, and, in the name of the Erie Company, tendered him fifty thousand shares of Erie common stock at 70. . . . As the stock was then selling in Wall Street at 40, the Commodore naturally declined to avail himself of this liberal offer. He even went further, and, disregarding his usual wise policy of silence,

II

EARLY AMERICAN¹ CONDITIONS¹

WHAT happened in Michigan was typical of the whole western situation. In the early days of its statehood it had planned and partly built two lines of railroad across its lower peninsula, from east to west. So severely, however, was the state shaken by the panic that in spite of its heroic efforts to meet its obligations the word Michigan became a scarecrow to eastern capital. As the years went on and there proved to be no possibility of completing the roads or even of procuring the money necessary to keep them in repair, it grew plain that the state must get rid of them. One, the Michigan Central, one hundred and forty-five miles long, ran from Detroit to Kalamazoo. The other, the Michigan Southern, also ran nowhere, but achieved the same result with less effort, being only seventy-five miles long. The roads together had cost \$3,500,000. Accordingly, placing its dilapidated property on the bargain-counter, the state waited for customers.

At last, in 1845, the railroads attracted the attention of two young men, both easterners who had gone West, and both persuaded not only that the day of prosperity for the West was about to dawn, but that, if the right means were taken, eastern capital could be brought to look upon a western road with favor. One of the men was James F. Joy, a graduate of Dartmouth College and the Harvard Law School, who had come to Detroit and was waiting for his practice to grow. The other was John W. Brooks, the superintendent of the Auburn and Rochester Railroad in New York. They believed that if the Michigan Central could be rehabilitated and completed for the remaining third of the distance to Lake Michigan, it would prove a profitable investment. It would open up the rich farming land of

¹ From *An American Railroad Builder: John Murray Forbes*, by Henry C. Pearson, Boston, 1911. By permission.

Michigan; better still, it would constitute a link in the shortest route from the East to Chicago and the Mississippi Valley. At that time the traveller left the cars at Buffalo, where he took a steamer which conveyed him, by the roundabout way of Lake Huron and the Straits of Mackinaw, to the head of Lake Michigan. If he had good luck, his boat reached Chicago in four days and a half; not infrequently six days were needed. With the railroad completed across Michigan, the time from Buffalo could be reduced to thirty-six hours. Of course, Brooks reasoned, it was conceivable that as years went on a railroad might be built along the southern shore of Lake Erie to Toledo, and from there to Chicago; but the cost of such an undertaking would be so stupendous and the returns so uncertain that he dismissed the possibility from his calculations. The Michigan Central was, it is true, a railroad in the wilderness; nevertheless its strategic position was such that it could hold its own against the circuitous water route. With eastern capital and eastern control, it was practically certain to succeed. Filled with this conviction Brooks, then twenty-six years old, set forth in the winter of 1845-46 to make the acquaintance of men of means in Boston and New York in the hope of interesting them in his scheme.

Good luck led Brooks, in the course of his labors, to the counting-room of John M. Forbes. Forbes had already made experiments, most of them financially unsuccessful, in the application of steam to ocean transportation;¹ but he was ready to listen to possibilities more promising in connection with steam transportation on land. In those days, of course, there was nowhere any expert knowledge of railroading; yet, judged even by the standards of that time, his notions of the problems of railroad management were, as he took delight in recalling in later years, naïvely rudimentary. He reasoned, for example,

¹ For the most part the vessels used steam only as auxiliary power, having hinged propeller-shafts, by means of which, in good sailing weather, the propeller could be turned up out of harm's way. The *Midas*, built and owned by the Forbes brothers, was the first steamer to navigate Chinese waters; the *Massachusetts* was one of the earliest ocean steamers on the Atlantic. The *Iron Witch*, an iron paddle-wheel steamer, designed for fast service on the Hudson, was an expensive failure.

be built across the state and properly equipped. Finally, there was the assurance that it was to be controlled by eastern capitalists of proved honesty and ability. Advantages such as these did not suffer when presented by a man like Forbes, who had vision, will, and above all the faculty of "pitching in"; and as the six months allowed for the formation of the company drew to an end, his tense and tireless efforts brought success. "I shall, I hope," he wrote when it was all over, "have cause to look back upon this September as one of the best spent months of my life." He had, indeed, opened the door upon his true career.

On September 23, 1846, the Michigan Central Railroad took possession of its property. Forbes was president, having consented to take the office only because he found that otherwise the necessary capital could not be secured; but he arranged to put the burden of his work on the treasurer, George B. Upton, to whom he made over his salary. John W. Brooks, at Detroit, was to have charge of the running of the road.

Promising as were the prospects of the Michigan Central, the road itself, as Brooks's report made clear, was a shabby piece of property. The one hundred and forty-five miles of track from Detroit to Kalamazoo were in bad condition, and fifty-six miles more were needed to complete the line to the nearest point on Lake Michigan. There were only four passenger "depots" along the line, and at Detroit nothing but a small freight depot and an engine-house, both inconveniently situated at some distance from the water front. The value of the rolling stock was \$68,000, the largest single item being \$4000 for a locomotive of twelve tons.

The track, like that of all early railroads, consisted of beams of wood six inches square, to which were fastened strips of iron half an inch thick by two and a quarter inches wide. The beams were fastened to cross-ties laid three feet apart, which in turn were laid upon under-sills, "the whole being supported upon short blocks of different lengths, varying according to the distance between the bottom of the under-sills and a firm foundation."¹ On the first thirty miles out of Detroit the wooden part

¹ Brooks's Report upon the Merits of the Michigan Central Railroad as an Investment for Eastern Capitalists, p. 4.

of the track, which had been in use for eight years, had never been renewed, and was naturally much decayed. The iron, worn out and broken, curved up at the ends; and when one of these up-springing pieces thrust itself through the floor of the car between the feet of a passenger, it was expressively known as a "snake-head." Such a form of track, best described by the phrase "a barrel-hoop tacked to a lath," was already passing; and the charter of the new company required the road to be laid with a heavy H rail of iron, weighing sixty pounds a yard.¹

When the directors held their first annual meeting at Detroit in June, 1847, the road had already proved prosperous enough to justify them in beginning at once to build toward Lake Michigan. They accordingly sanctioned expenditures amounting to over two million dollars, which should give them a road fully equipped to handle its rapidly growing business. The actual cost, it may be added, was more than four million dollars.

It was at the time of this meeting that Forbes and some of his associates received their first lesson in practical railroading. They travelled on the road, explored so-called harbors on Lake Michigan in the search for a western terminus, went on to Chicago, and returned by steamer through the Straits of Mackinaw. Forbes, a born traveller, with a keen eye and a zest for every experience, described the trip in a journal letter to his wife, which deserves a place here for the picture it gives of the rawness of the country which the railroad was to do so much to develop.

Steamer Empire, Mackinaw, June 11, 1847

We reached Detroit 1.30 in the night and landed in the mud, slept an hour or two, and had to get up and go to find T. Howe; Brooks, our mainstay, having gone West. We decided to follow, and started at eight or so on our railroad. . . .

For the first few miles the country was dreary; flat, with a great deal of surface water, through forests mostly, but dense and melancholy ones, water under foot and huge decaying trees lying about; the trees generally tall and with no foliage until near the top.

We found the road in a most deplorable condition, the iron broken up often into pieces not a foot long, and sometimes we could not see any

¹ The present weight of the heaviest steel rails is more than one hundred pounds a yard.

town, there to be bailed out; but, when they approached Detroit, they found for the first time that the law had been changed, and that they could be tried in a place where justice was possible. They hired William H. Seward to come from New York and defend them, which he did in a speech worse than any made by himself or any other demagogue in this country. The trial lasted all summer, Fitch and one or two others dying in jail, it was said in consequence of medicine taken to produce illness and prolong the trial in hopes of a disagreement of the jury. Mr. Brooks's measures for getting evidence and working up his case were so good that in spite of Seward's help and of all the disadvantages of a great corporation prosecuting individuals and farmers, all the worst members of the gang were . . . convicted. . . . It was the great railroad trial of this century, and settled many practical questions for all Mr. Brooks's successors in railroad building and management.

In the operation of the road, Brooks, as this episode makes clear, was the guiding spirit. Besides being an experienced engineer, he was an executive full of energy and resource. For very little of what he was called upon to do was there any precedent; conditions were so exceptional that his inventive genius was heavily drawn upon. It was, in fact, a typical instance of the way in which mother wit and Yankee ingenuity can save a situation and establish order out of chaos.

Such success as Brooks achieved in his own department, however, would have been impossible if the financial management of the road also had not been masterly. The older railroads in the East yielded every six months a wreckage of embarrassments and disasters, all due to the mental or moral incompetence of the men who undertook to guide them through the uncharted waters of railroad finance. To find and to keep the channel under such circumstances required a remarkable measure of alertness, faith, and courage. Railroading is preëminently an enterprise in which men must think in decades and scores of years; yet at this time the oldest road in Massachusetts had been running barely fifteen years. So it was that, in these hobble-de-hoy days of railroads, the Michigan Central owed no little of its brilliant success to the fact that its financial affairs were guided by a man so sound and resolute as John M. Forbes.

In the first three years of Forbes's presidency more than \$6,000,000 were required for the purchase, construction, and

But perhaps the chief reason for the rapid development of these years, especially as regards railroads, was the call of the Far West. With the discovery of gold in California in 1849, the nation took a continental view of itself. Its first thought was to abridge the journey, long and wearisome whether by land or by sea, to the Pacific coast, and every railroad in the Mississippi Valley entertained schemes of laying its track westward over the prairies. "The discoveries of gold," wrote Forbes in 1854, "have been the direct cause of the construction of four-fifths of the western railways begun since 1849. The success of a few which had been previously constructed gave confidence, it is true, and the West had been fast developing; but not much faster than it had been in four years previously, when hardly anything was done in railways there. This sudden success of western enterprises was also in the face of the failure or the depreciation of the eastern railways."¹

By the year 1850 eastern financiers were fully awake to these marvellous opportunities for the investment of capital. Their own resources being still inadequate, they again appealed to Europe. "As money seems to be a drug on your side," wrote Forbes, in May of 1852, to the merchant in Hamburg to whom three years before he had turned in vain, "while we have still use for it here at a fair price, I cannot help repeating the suggestion which I then made for your consideration. When I see quotations on your side and on ours for money, I feel just as you would if old *Java Coffee* were selling here at four cents, and a drug at that, while *fifteen days* distant it was worth eight cents in your market."

And to Russell Sturgis in London he wrote in September, 1851, concerning the prospects of railroad building in Illinois: "Imagine a deep black soil, almost every acre of which can be entered at once with the plough, and an enormous crop secured the first season, but where the very fertility and depth of the soil make transportation on common roads almost impracticable at the season when produce ought to be sent to market, and this region now for the first time opened to a market by railroad.

¹ February 20, 1854.

The farmer himself in the interior of the state will be nearer New York *in time* and even in cheapness of transporting his produce than the fertile Genesee valley was before the Erie Canal was made, and where poorer land is now worth one hundred dollars per acre and upwards — nearer in time than many parts of the interior of New York and Ohio *now are*."

The result of this constant hammering and of such a fact — patent to all — as the success of the Michigan Central, was that the English threw their hesitation to the winds, and after it their discretion too. The same British lack of discrimination which, after the panic of 1837, had lumped together all investments in the Middle West as bad, now lumped them all together as good.

Whatever the remote danger from this state of things, — and, as will presently appear, it was a danger that Forbes saw clearly, — the immediate advantage to the Michigan Central was the assurance of an adequate supply of money for its westward extension. Its first move was to build some ten miles of track, from New Buffalo, in Michigan, to Michigan City, in Indiana. There remained fifty-five miles to be constructed to Chicago, — work which had to be done under conditions of irritation and excitement, for their rival in the race, the Michigan Southern, proved to be both alert and slippery. To build in Indiana, the Michigan Central put money into the New Albany and Salem road, a local affair which had thirty-five miles of track in the southern part of the state and a charter conveniently vague, and which, in return for the grateful inflow of eastern capital, consented to begin building at once a "branch" around Lake Michigan, in the north-western corner of the state. The "Southrons" protested, and persistently sought injunctions; the Michigan Central men, to prove their good faith, had to put their hands deeper into their pockets, with the result that the New Albany and Salem achieved the glory of becoming the first line to connect Lake Michigan and the Ohio River.

In building the twenty miles of track in Illinois between the state line and Chicago, even greater difficulties were in the way. Partly from proper reasons of economy, but chiefly because it had no charter and the legislature would not meet for a year

its iron in good season from England, built steadily and achieved the triumph of beginning its regular through service on May 21, 1852, a day ahead of the first through train on the Michigan Southern, and a week before that road was in regular running order. A month later, at a special session of the Illinois legislature, the six-mile bit of track in Illinois was legalized.

In the midst of this struggle to extend its road to the west, the Michigan Central was forced to look also to the matter of eastern connections. A line of roads between Buffalo and Toledo connecting with the Michigan Southern was already under construction. Therefore the Michigan Central stockholders were urged, in the most persuasive of circulars, to subscribe to the stock of the Canada Great Western, which was to run from Windsor, opposite Detroit, through Ontario to Niagara Falls, there crossing the river by a suspension-bridge. Although the scheme had many advantages, notably in the shortness of the route, Forbes and his friends were hampered by the necessity of working with a foreign corporation. First, the Canadian road insisted on a different gauge of track from that of the Michigan Central. Then, at the instigation of sharp citizens of Detroit, with an eye for making a penny out of delayed travellers, it attempted to locate its station in Windsor at a point as remote as possible from the station of the Michigan Central.

A later and more serious cause of trouble was the attempt of its Canadian directors to sell the road to the Grand Trunk. Journeys to Canada on the part of Forbes and other American directors were constantly necessary "to kill off some rascals"; but as troubles continued and multiplied, and as it was found inexpedient to make an appeal to the English government, the Michigan Central men, after a few years, withdrew altogether.

In these labors to make the Michigan Central a link in an all-rail route from the East to Chicago, the directors of the road had assumed heavy burdens and run great risks. Besides adding a million and a half to the cost of their own road, they had been obliged to purchase bonds of the Illinois Central and the Indiana roads to the amount of \$600,000 and \$800,000 respectively, and they had contributed no less heavily to the Canadian line. But

they had been face to face with the emergency of competition. Not to have accepted the challenge would have been to throw away all the money and labor that they had put into the road—a mocking of their visions. And from the competition which they had spent so much to enter there lay a further danger, in that their rivals were unscrupulous.

For the next five years operating expenses were heavily increased by the necessity of more frequent and more rapid passenger trains, and of “runners” at various Eastern passenger stations, and earnings were cut into by reduced freight rates. Every truce made in the shape of an agreement as to rates was secretly violated by the Michigan Southern, and then followed open war. This state of things continued until the Michigan Southern was wrecked in the panic of 1857. After that, with a new management in control, an arrangement that proved permanent was made between the two roads by which the steamboat lines of both on Lake Erie were withdrawn, the number and the speed of the through passenger trains were reduced, and the freight earnings pooled on a basis of fifty-eight per cent for the Michigan Central and forty-two per cent for the Michigan Southern. In this fashion these financiers discovered the laws of competition and combination in the field of railroading.

In spite of the weight of the burdens caused by construction and competition, the prosperity of the Michigan Central in the years from 1852 to 1857 was sufficient to carry them easily. In a résumé of the history of the road made by Forbes in December, 1855, after nine years of operating under private ownership, he told the story of its success in striking figures.

The history of railroad enterprise in the West, up to that time [1846], was one of almost universal failure, and we were entering upon ground that was worse than untried; it had been prematurely tried under the auspices of the state governments, and isolated embankments at various points stood as monuments of disaster. . . .

With very good management it [the Michigan Central] was capable of earning as a maximum \$400,000 per annum; it has now grown to be 269 miles long, with a power of earning over \$2,500,000.

During our first winter, say December, January and February, 1846–1847, our *total* receipts were about \$53,000. For the first winter after our

The dangers of such a situation came upon Forbes with cumulative effect in June, 1873, after his return from a yachting trip to the Azores and a visit to California which had kept him away from Boston and business for a year and a half. Long trusted as his co-workers and fellow counsellors had been, their acquiescence in the methods and routine of smaller days continued under the new conditions became a trouble that he could not shake off. Reports from his sharp-eyed and critical cousin in the West, who now, as vice-president of the B. & M. in Nebraska, could speak more freely of C. B. & Q. men and measures, helped to make Forbes feel that matters should no longer be allowed to drift. The bonded indebtedness of the combined roads needed badly to be got into satisfactory shape, and there was a floating debt of a million and a half dollars. His uneasiness is expressed in a letter written to a fellow director not long after his return.

I do think we need more control at this end over our 50-million property.

We know next to nothing and we trust the administration of this mammoth enterprise 1000 miles off to a man who has no experience in the details of R. R. business, and who represents at least two other companies, whose interests *may be* conflicting: 1st, the coal co. of whom we buy our fuel; 2d, a R. Road which, with or without his fault, has managed to get largely into a debt to us which it cannot pay.

I don't know how many other things he may be in, which are suckers instead of feeders, but if the stockholders ever look into their affairs and find that in one way and another — with the Board's assent and without it — the present administration have used over a million of *their* money for the protection of other enterprises in which some of the Directors are concerned, and all the stockholders are not, we shall find ourselves in a very awkward position. It was only at the June meeting of the Board that I knew of this accumulation of indebtedness. It was my fault that I did not know and try to prevent it, but I don't feel like going on in the same road much farther.

Anybody may make one such blunder in trusting others' management, but the man that makes it a second time with his eyes thus opened becomes a party to the mismanagement, and I confess I see nothing to prevent the same sort of thing being done right over again — except that our credit is not quite so good.¹

¹ July 13, 1873.

and (as he says) kept distinct in bank from his private or from any outside mixings; but he is and professes to be simply an automaton. . . . To our questions whether he used any discretion in the application of the funds or any supervision of their use, he replied frankly:—

“None whatever. I simply pay the money when called for by the president and the superintendent.”

“What has been done with the \$140,000, more or less, earned by the roads since December 1, 1872?”

“It has been paid to the superintendent’s order for expenses, and the balance has been paid to the president. What the president does with it is no concern of mine.”

Question to the president: “What have you been doing with the company’s money?”

Answer. “I have been paying the notes which I have given as president.”

“What are the notes? Where is the record of them? Is it in the treasurer’s account?”

“It is not in the company’s books, but can be ascertained.”

“What were the notes given for?”

Answer. “Chiefly to meet the obligations of two construction companies, of which I was president also, and which built the roads of each company by contract.”

“Then you, as president of the railroad company, are paying yourself as president of the construction company, without the supervision of the treasurer or of any one else, and without any auditing of your accounts?”

“Yes.”

“Have the construction company received the full amount of money, of stocks, of lands, for which they agreed to construct and equip the roads?”

“Yes, they have, leaving unfinished about forty miles of Turkey Branch and twelve miles on the lower road.”

“Have any of your directors besides yourself been interested in these contracts?”

The answer to this was not definite, but left the impression that some of the directors had been, and he promised to send me a copy of the contracts, and a list of the stockholders in the construction company. He asserts that all the assets of the construction company have been expended, except a part of the land grant, which remains unsold; and to my question whether this remaining land ought not to be returned to the company, he answered that he thought the contractors would do whatever is fair, but that they had been large cash losers by the contract, and have nothing but a little land and a good deal of railroad stock to show for it.

Exactly how much cash from our earnings had been paid over to the contractor president, we had not time to investigate, but of course if the superintendent’s figures are right, about \$140,000; and the railroad president seems to be expecting to go on paying to the contractor president our

earnings as they come in, until he has paid off the debts of the construction company. . . .

What the equities or the elements of expediency are, I know not, but it is perfectly clear to me that the board, which I now understand is transferred to Boston, ought at once to direct the treasurer to apply the earnings, first, to paying off legitimate operating expenses, and next to hold the balance for such uses as the board may direct, — or, better still, remit it to Boston, instead of holding it to the order of Mr. Graves — an active merchant and the representative, first, of contractors, and second, of another railroad, the Iowa Pacific, to whose use he has already applied \$170,000 of the funds of our two companies, or of the contractors, which are all mixed up together. Mr. Graves (to his credit be it said) seemed to appreciate the absurdity of his position, and expressed a desire to have his accounts audited and to have a settlement; but, in our judgment (I speak of Griswold and myself), the blame will be transferred to the board, if, after knowing this state of things, they allow the funds of the company to remain a day longer under the control of a man who has so many other uses for them, however honest and however rich he may be on paper.

As an instance of what may happen, the pay-roll was postponed a month in order to pay some of the debts, but whether it was for the debts of the railroad company or for the contractor, or the Iowa Pacific, or Mr. Graves's personal ones, we had not time to investigate, and nobody can tell until an auditor (and a very good and forcible one) settles what Mr. Graves's account stands at, and who ought to pay the notes. He has signed as president, probably without any vote of the board, and certainly without having them recorded in the books of the company.¹

The director to whom Forbes poured out this story of mismanagement, in the hope of eliciting his sympathetic indignation, was himself, such is the irony of circumstance in the business world, one of the members of the construction company, — a fact which soon came to light. Indeed, it presently transpired that six out of the twelve members of the C. B. & Q. board were in this position, and five of the six were Boston men. Being persons of integrity, who had conceived that, in their two-fold capacity as contractors and directors, they were fully able to deal with themselves justly, they took offence at Forbes's pointed questions concerning their acts, and refused to give information. This secrecy, based on a natural though mistaken wish not to seem to flinch under fire, of course aroused suspicion, and led the way

¹ November 9, 1873.

try it, and at once had to frame advertisements, choose our list of directors and get them all into the New York, Albany, and Boston papers by telegraph, also to get the stenographer to write out the pithy parts of his Dubuque report and send this off to New York by telegraph. We did not know then how much the press were interested in the subject. We found afterwards that they had one or two stenographers, and the *Tribune* reporter sent on 1000 words by wire that afternoon. Then I had to write letters and telegrams, and talk, and do everything but sleep! In brief we had a good old war-time. P. W. Chandler says there had not been so much excitement in Boston any day for thirty-five years (he meant in business circles) as the day our advertisement came out. On Wednesday 24th, Will and Griswold in Chicago had 22,000 majority or say about 90,000 votes out of 155,000 that were thrown, and carried our whole ticket except T. J. Coolidge — that tender-hearted old Green ordering his large batch of votes thrown for D——, and thus electing him. He however is, I guess, docile as a kitten, and I have no doubt we can now have our own way on all reasonable things, and you know I never want any other. Will got back last night, and now, the fight being over, the work begins, for with victory will, I fear, come responsibility and care. It would have been far easier, just to have stepped out and sold my stock, and had an easy life; and I expect to repent not doing so.¹

The significance of this victory was shown in the immediate appointment of George Tyson as auditor, “a very good and forcible one,” and with his arrival in Chicago a new era began in the company’s methods of accounting. The River Roads were sold to the Chicago, Milwaukee, and St. Paul, and the claims of the bondholders of these roads upon the C. B. & Q. directors who had recommended the bonds were recognized, though the amount of money restored to the victims was necessarily small. Since those of the contractor-directors who still remained on the board could not fail to see that the success of the men and measures that they had opposed had put their property on a solid basis than ever before, it was worth while for them to swallow their pride for the sake of remaining in the family and sharing in its prosperity.

HENRY G. PEARSON

¹ February 26 and 28, 1875.

Standard would be under the painful necessity of taking away its shipments and building pipe lines to Marietta. The Cincinnati & Marietta Railroad at that time was in the hands of a receiver, one Phineas Pease, described as a "fussy old gentleman, proud of his position and fond of riding up and down the road in his private car." It is probably a good description. Certainly it is evident from what follows that the receiver was much "fussed up" ethically. Anxious to keep up the income of his road, Mr. Pease finally consented to the arrangement the Standard demanded. But he was worried lest his immoral arrangement be dragged into court, and wrote to his counsel, Edward S. Rapallo, of New York City, asking if there was any way of evading conviction in case of discovery.

Upon my taking possession of this road [the receiver wrote], the question came up as to whether I would agree to carry the Standard Company's oil to Marietta for ten cents a barrel, in lieu of their laying a pipe line and piping their oil. I, of course, assented to this, as the matter had been fully talked over with the Western & Lake Erie Railroad Company before my taking possession of the road, and I wanted all the revenue that could be had in this trade.

Mr. O'Day, manager of the Standard Oil Company, met the general freight agent of the Western & Lake Erie Railroad and our Mr. Terry, at Toledo, about February 12, and made an agreement (verbal) to carry their oil at ten cents per barrel. But Mr. O'Day compelled Mr. Terry to make a thirty-five cent rate on all other oil going to Marietta, and that we should make the rebate of twenty-five cents per barrel on all oil shipped by other parties, and that the rebate should be paid over to them (the Standard Oil Company), thus giving us ten cents per barrel for all oil shipped to Marietta, and the rebate of twenty-five cents per barrel going to the Standard Oil Company, making that company say twenty-five dollars per day clear money on George Rice's oil alone.

In order to save the oil trade along our line, and especially to save the Standard Oil trade, which would amount to seven times as much as Mr. Rice's, Mr. Terry verbally agreed to the arrangement, which, upon his report to me, I reluctantly acquiesced in, feeling that I could not afford to lose the shipment of 700 barrels of oil per day from the Standard Oil Company. But when Mr. Terry issued instructions that on and after February 23 the rate of oil would be thirty-five cents per barrel to Marietta, George Rice, who has a refinery in Marietta, very naturally called on me yesterday and notified me that he would not submit to the advance, because the business would not justify it, and that the move was made by

the Standard Oil Company to crush him out. (Too true.) Mr. Rice said: "I am willing to continue the 17½ cent rate which I have been paying from December to this date."

Now, the question naturally presents itself to my mind, if George Rice should see fit to prosecute the case on the ground of unjust discrimination, would the receiver be held, as the manager of this property, for violation of the law? While I am determined to use all honorable means to secure traffic for the company, I am not willing to do an illegal act (if this can be called illegal), and lay this company liable for damages. Mr. Terry is able to explain all minor questions relative to this matter.¹

Mr. Rapallo, after consulting his partner and "representative bondholders," "fixed it" for the receiver in the following amazing decision:

You may, with propriety, allow the Standard Oil Company to charge twenty-five cents per barrel for all oil transported through their pipes to your road; and I understand from Mr. Terry that it is practicable to so arrange the details that the company can, in effect, collect this direct without its passing through your hands. You may agree to carry all such oil of the Standard Oil Company, or of others, delivered to your road through their pipes, at ten cents per barrel. You may also charge all other shippers thirty-five cents per barrel freight, *even though they deliver oil to your road through their own pipes*; and this, I gather from your letter and from Mr. Terry, would include Mr. Rice.²

Now, how was this to be done "with propriety"? Simply enough. The Standard Oil Company was to be charged ten cents per barrel, less an amount equivalent to twenty-five cents per barrel upon all oil shipped by Rice. "Provided your accounts, bills, vouchers, etc., are consistent with the real arrangement actually made, you will incur no personal responsibility by carrying out such an arrangement as I suggest." Even in case the receiver was discovered nothing would happen to *him*, so decided the counsel. "It is possible that, by a proper application to the court, some person may prevent you, in future, from permitting any discrimination. Even if Mr. Rice should compel you, subsequently, to refund to him the excess charge

¹ Proceedings in Relation to Trusts, House of Representatives, 1888, Report No. 3112, pp. 575-576.

² See Appendix, Number 46, Letter of Edward S. Rapallo to General Phineas Pease, receiver Cleveland & Marietta Railroad Company.

has the same right to demand the service of railroads on equal terms that they have to the use of a public highway or the government mails. And hence when, in the vicissitudes of business, a railroad corporation becomes insolvent and is seized by the court and placed in the hands of a receiver to be by him operated pending the litigation, and until the rights of the litigants can be judicially ascertained and declared, the court is as much bound to protect the public interests therein as it is to protect and enforce the rights of the mortgagers and mortgagees. But after the receiver has performed all obligations due the public and every member of it — that is to say, after carrying passengers and freight offered, for a reasonable compensation not exceeding the maximum authorized by law, if such maximum rates shall have been prescribed, upon equal terms to all, he may make for the litigants as much money as the road thus managed is capable of earning.

But all attempts to accumulate money for the benefit of corporators or their creditors, by making one shipper pay tribute to his rival in business at the rate of twenty-five dollars per day, or any greater or less sum, thereby enriching one and impoverishing another, is a gross, illegal, inexcusable abuse of a public trust that calls for the severest reprehension. The discrimination complained of in this case is so wanton and oppressive it could hardly have been accepted by an honest man having due regard for the rights of others, or conceded by a just and competent receiver who comprehended the nature and responsibility of his office; and a judge who would tolerate such a wrong or retain a receiver capable of perpetrating it ought to be impeached and degraded from his position.

A good deal more might be said in condemnation of the unparalleled wrong complained of, but we forbear. The receiver will be removed. The matter will be referred to a master to ascertain and report the amount that has been as aforesaid unlawfully exacted by the receiver from Rice, which sum, when ascertained, will be repaid to him. The master will also inquire and report whether any part of the money collected by the receiver from Rice has been paid to the Standard Oil Company, and if so, how much, to the end that, if any such payments have been made, suit may be instituted for its recovery.¹

On December 18 George K. Nash, a former governor of Ohio, was appointed master commissioner to take testimony and clear up the point doubtful in the judge's mind — to whom had the extra money paid by Rice been paid; the receiver declared that he never paid the Standard Oil Company any

¹ Proceedings in Relation to Trusts, House of Representatives, 1880, Report No. 3112, pp. 577-578.

part of Rice's money. Mr. Nash summoned a large number of witnesses and gradually untangled the story told above. Mr. Pease spoke truly, he had never paid the Standard Oil Company any part of Mr. Rice's money. A joint agent of the railroad and the pipe line had been appointed, at a salary of eighty-five dollars a month, sixty dollars paid by Pease and twenty-five dollars by the Standard, who collected the freight on independent shipments and divided the money between the two parties. It was from this agent that it was learned that, twelve days *after* Judge Baxter ordered Receiver Pease to bring his contracts into court, the money paid on Mr. Rice's oil had been returned by the Standard Oil Company.¹ While the investigation in regard to Mr. Rice's oil was going on, complaints came to Commissioner Nash from two other oil works at Marietta that they had been suffering a like discrimination for a much longer time. The commissioner investigated the cases and found the complaints justified. The Standard Oil Company had received \$649.15 out of the money paid by one concern to the railroad for carrying its oil, and \$639.75 out of the sum paid by another concern! Both of these sums were returned by the Standard.²

Of course the case aroused violent comment. In 1888 it came before the Congressional Committee which was investigating trusts, and an effort was made to explain the twenty-five cents extra as a charge of the pipe line for carrying oil to the railway. Now, the practice in vogue in the Oil Regions then and now is that the *purchaser of the oil pays the pipe-line charge*. The railroad has nothing to do with it. Even if the Standard Oil Company puts a tax on railroads for allowing them to take oil carried by its pipe lines — thus collecting double pay — the tax would not apply in Mr. Rice's case, for the oil came to the Cincinnati & Marietta road not through Standard pipes but through Mr. Rice's own pipes.

¹ See Appendix, Number 47, Testimony of F. G. Carrel, freight agent of the Cleveland & Marietta Railroad Company.

² See Appendix, Number 48, Report of the Special Master Commissioner George K. Nash to the Circuit Court.

been above that point repeatedly, and it was down at one time to 9. It has always been a speculative stock, the sales amounting in a year to several times the total amount outstanding. But, for the sake of getting an estimate of the profits made by the builders of the Union Pacific, even though that estimate be admittedly unreliable, the valuation given above may be taken. At 30, the \$36,762,300 of stock would be worth \$11,028,690. Adding this to the cash profit as stated above, the total profit appears to be \$16,710,432.82, or slightly above $27\frac{1}{2}$ per cent of the cost of the road. Considering the character of the undertaking and the time when it was carried through, this does not seem an immoderate profit.

Such changes as took place have been almost uniformly downward; and, as reasonable notice of these has been given, there has been no offset to the public's gain such as sudden and fluctuating reductions bring. The figures in the note show the steady downward trend of rates, and prove at least that the effect of the Association was not to maintain rates at any fixed high figure.¹ Certainly, that part of the public which had to do directly with the roads in the Association was not dissatisfied with the working of the pool. In 1887 the General Commissioner was able to say at the annual convention, "There has been literally no complaint of discrimination between individuals in the same locality, and very little (and that unreasonable) between localities."²

In conclusion, a word may be said of the effect of the Association in maintaining rather than suppressing competition among the roads. Pools of which this is a type do indeed limit competition. But it is a great mistake to suppose that they destroy competition. On the contrary, as Professor Seligman puts it,³ "they maintain the advantages of a healthy competition. Each of the roads will still attempt to procure as much

¹ The rates, in cents per hundred pounds on numbered classes, from Eastern cities to Atlanta on the first of January of each year, have been: —

² 21 Circular Letters, 1620.

³ In the *Political Science Quarterly*, Vol. II, p. 389.

business as can possibly be obtained in a fair and open manner." The agreement of the Southern Railway & Steamship Association was renewed yearly, and most of the contracts for division of business were made for a year at a time. Each road tried to carry as much freight as possible, so that, when the next contract came to be made, it might demand with some show of reason a larger share of the business. It is competition of this sort that is advantageous, not competition with little or no regard to the cost of doing the work.

HENRY HUDSON)

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TABULAR STATEMENT OF DISTANCES, CURRENT RATES, AND PERCENTAGES BETWEEN CINCINNATI AND CHICAGO AND NEW YORK, PHILADELPHIA, BOSTON AND BALTIMORE AND SOUTHERN PORTS

TO KNOXVILLE, TENN.

CLASSES	PER BBL.

TO CHATTANOOGA, TENN.

A collection of 15 small, stylized icons representing various professions and industries, arranged in a grid-like fashion. The icons include a chef's hat, a graduation cap, a medical cross, a gear, a lightbulb, a magnifying glass, a handshake, a rocket, a flower, a leaf, a person, a car, a house, a tree, and a star.

To ATLANTA, Ga.

2. The distances from the Eastern Seaboard cities in the above statements are *all rail*, while the rates are *rail and water*, or based on the rail and water rates; both the distances and rates from Cincinnati and Chicago are *all rail*. There are a number of steamship lines running from the Eastern Seaboard to Charleston, Savannah and other southern ports, namely, the Ocean Steamship, the Mallory, the Morgan, the Clyde, and the Merchants and Miners; and the above combined *rail and water* rates appear to be made by adding the rate of the steamer lines to the rate of the rail lines from the ports to interior points. The actual mileage by water from New York to Charleston and Savannah is estimated at about 750 miles, but the rates of the steamer lines are made on the basis of what is termed by the witnesses a “constructive mileage” of 230 miles to Charleston and 250 miles to Savannah, that is, the water rate from New York to Charleston is equal to the rail rate for 230 miles by land, and to Savannah, to the rail rate for 250 miles. The all rail distance from New York to Charleston is 799 miles and to Savannah 914 miles. The following are the distances from Charleston and Savannah by rail to the interior points named:

FROM CHARLESTON TO	MILES	FROM SAVANNAH TO	MILES
Knoxville	533	Knoxville	520
Chattanooga	446	Chattanooga	433
Atlanta	308	Atlanta	295
Rome	367	Rome	367
Birmingham	475	Birmingham	462
Anniston	412	Anniston	399
Selma (via E. T. V. & G.) . .	561	Selma (via S. F. R. R.) . .	462
Meridian (via E. T. V. & G.) .	671	Meridian (via E. T. V. & G)	669

The sums of the “constructive” mileages of 230 miles from New York to Charleston and 250 miles to Savannah, plus the actual rail mileages to interior points above given, are shown by the following table:

FROM N.Y. VIA CHARLESTON TO	MILES	FROM N.Y. VIA SAVANNAH TO	MILES
Knoxville	763	Knoxville	770
Chattanooga	676	Chattanooga	683
Atlanta	538	Atlanta	545
Rome	597	Rome	617
Birmingham	705	Birmingham	712
Anniston	642	Anniston	649
Selma	791	Selma	712
Meridian	901	Meridian	919

These are what are termed the “rate-making mileages” from New York by water to Charleston and Savannah and thence by rail to the interior points named, upon which the combined *rail and water* rates from New York are based. The rail and water rates from the Eastern Seaboard cities to Southern territory practically control the all rail rates. The all rail rates are the same as the rail and water rates to Knoxville, Chattanooga, Birmingham, Selma and Meridian, but to Rome, Atlanta, Anniston and points east of a line drawn from Chattanooga through Birmingham, Selma and Montgomery to Pensacola, the all rail rates are higher than the rail and water rates by the following differentials.

Classes	1	2	3	4	5	6	A	B	C	D	E	H	F
Differentials in cents	8	6	5	4	3	2	2	2	2	2	3	4	4

3. The lines regularly engaged in the transportation of traffic from Cincinnati, Chicago and contiguous territory, to Southern territory, are *all rail*. There appears to be no through water or rail and water line in regular operation for the transportation of traffic in the numbered classes between those territories. There is a line by lake from Chicago to Buffalo and from that point by rail or canal to New York, which has a *direct* effect on the rail rates between Chicago and the seaboard — particularly the rates on grain and grain products. As to rates on articles of the higher classes, the influence of the water competition does not appear to be so controlling. The rates from Chicago to New

lettered classes are under the Classification of the Southern Railway & Steamship Association, which applies south of the Ohio and Potomac and east of the Mississippi rivers. As above stated, grain and grain products fall under Class 6 of the Official Classification; in the Southern Classification, grain and its products and heavy freight are in the lettered classes. Manufactures and costly commodities are in the higher classes.

5. It appears from tariffs on file with the Commission that there were in existence when the Interstate Commerce Law was passed and up to April 17, 1893, through rates from New York *via* Cincinnati to Chattanooga, Meridian and Birmingham, less than the sum of the rates to Cincinnati and the rates thence on to those cities, and there are such rates still in effect to Nashville, Memphis, Mobile, and a number of Mississippi river points.

Those through rates to Chattanooga, Meridian, and Birmingham, were as follows :

1	2	3	4	5	6
114	98	86	73	60	49

The following are the rates from New York to Cincinnati :

1	2	3	4	5	6
65	57	44	30	26	22

* * * * *

9. All the defendants (including the steamship lines) in the Cincinnati case are also defendants in the Chicago case and are for the most part members of the Southern Railway & Steamship Association. The latter case, as before stated, embraces as defendants, in addition to those in the former, roads north of the Ohio participating in the transportation of traffic from Central territory to that river. *None of these are members of the Southern Railway & Steamship Association except the Illinois Central Railroad*, which, as we have seen, extends into territory south of the Ohio. This Association is composed of

Rochester and Albany, New York, as far west as the Pacific coast, and to a greater or less extent over the South from Texas and Arkansas to the Virginias. The testimony tends to show that in the Southeast, in the territory embracing Alabama, East Tennessee, Florida, Georgia, the Carolinas and Virginias, and particularly at points near the Atlantic coast, the merchants and manufacturers of Central territory meet with strong competition in the sale of these goods from New York and the other Eastern Seaboard cities. They do not appear to be driven out of this territory altogether by this competition, but their business and the profit on it are not so great as a general rule as in other markets reached by them. In some instances they are required by their customers to "equalize the rates," or in other words, to refund the excess of the rates on their goods over those on goods of the same kind and class from Eastern Seaboard territory.

11. L. R. Brockenborough, General Freight Agent of the Chicago & Eastern Illinois Railway Company (whose road runs from Chicago to the Ohio at Evansville) stated that "his impression (is) that the general impression seems to be that the rates from the Central territory into Southern territory are out of line with those from the seaboard," and that his road "would be willing to reduce its rate to bring the through rate in line with the New York rate." John C. Gault, General Manager of the Queen & Crescent System (in which are defendants, the Cincinnati, New Orleans & Texas Pacific and the Alabama Great Southern Companies) stated that he "always thought rates from Chicago to southern points on higher classes ought to be the same as those from Boston and New York;" and that this "would not harm New York and hardly be enough in favor of the west." He also, under date of August 14, 1888, wrote to the Commissioner of the Chicago Board of Trade, that "the roads interested in Chicago business ought in my (his) judgment to take such action as is necessary to insure a reduction of the rates" from the West. M. C. Markham, Assistant Traffic Manager of the Illinois Central R.R. Co., testified that he had made an effort to have the Southern Railway & Steamship

the value of the comparison being dependent in all cases upon the *degree* of similarity of circumstances and conditions attending the transportation for which the rates compared are charged. It appears from the tabular statements in our findings of fact, giving *all rail* distances and class rates from Cincinnati and Chicago in Central territory and from New York and other northeastern cities, to points in Southern territory, that on a *mileage* basis the rates from the former (particularly, those on the higher or numbered classes) are largely in excess of those from the latter. For the purpose of illustration the following table is given, which shows the current rates on goods of Class 1 from Cincinnati and Chicago and from New York to points named in Southern territory, and what the rates from Cincinnati and Chicago would be on the basis of the (all rail) mileage rates from New York:

To	CURRENT CLASS 1 RATES			RATES ON BASIS OF MILEAGE RATES FROM NEW YORK	
	From Cincinnati	From Chicago	From New York	From Cincinnati	From Chicago
Knoxville	76	116	100	39	78
Chattanooga	76	116	114	45	79
Rome	107	147	114	51	83
Atlanta	107	147	114	61	95
Meridian	122	134	124	62	71
Birmingham	89	119	114	54	75
Anniston	107	147	114	57	85
Selma	108	138	114	62	78

The excess of the Class 1 rates in the above table from Cincinnati and Chicago over the New York rates from a mileage standpoint is, as follows:

To	FROM CINCINNATI	FROM CHICAGO	To	FROM CINCINNATI	FROM CHICAGO
Knoxville . .	37	38	Meridian . .	60	63
Chattanooga .	31	37	Birmingham	35	44
Rome	56	64	Anniston . .	50	62
Atlanta . . .	46	52	Selma	46	60

To	FROM NEW YORK	FROM CHICAGO	FROM CINCINNATI
	"Rate-making Mileages" <i>via</i> Charleston — Rail and Water	All Rail Distances	All Rail Distances
Knoxville	768 miles	560 miles	290 miles
Chattanooga	676 "	595 "	335 "
Rome	597 "	673 "	413 "
Atlanta	538 "	733 "	475 "
Meridian	901 "	728 "	630 "
Birmingham	705 "	652 "	478 "
Anniston	642 "	715 "	476 "
Selma	791 "	746 "	598 "

It will be seen from the above table that the "rate-making mileages" from New York, *which are arrived at by an allowance for the estimated effect of water competition — the estimate being that of the defendants*, are greater than the actual all-rail distances from Chicago, as follows: to Knoxville, by 203 miles; to Chattanooga, by 81 miles; to Meridian, by 178 miles; to Birmingham, by 53 miles; and to Selma, by 45 miles. They are less to Rome by 76 miles, to Anniston by 73 miles and to Atlanta by 195 miles. They are in every instance much greater than the distances by rail from Cincinnati. The all rail distances from Cincinnati and Chicago are the following percentages of the "rate-making mileage" from New York:

To	FROM CINCINNATI	FROM CHICAGO
Knoxville	38%	73%
Chattanooga	50	88
Rome	69	112
Atlanta	88	136
Meridian	70	80
Birmingham	68	92
Anniston	74	111
Selma	80	94

On the above basis — that is, making the rates from Cincinnati the same percentages of the current New York

an order of the Commission dated February 17, 1910, but in fact rendered May 24, 1910, and which order is in the following language :

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having on the date hereof made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof, and having found that the present rates of defendant the Cincinnati, New Orleans & Texas Pacific Railway Co. (lessee of the Cincinnati Southern Railway) for the transportation of articles in the numbered classes of the Southern Classification from Cincinnati, Ohio, to Chattanooga, Tenn., are, to the extent that said rates exceed the rates named in paragraph 3 hereof, unjust and unreasonable.

2. It is ordered, That said defendant be, and it is hereby, notified and required to cease and desist, on or before the 15th day of July, 1910, and for a period of not less than two years thereafter abstain, from exacting its present rates for the transportation of articles in the numbered classes of the Southern Classification from Cincinnati, Ohio, to Chattanooga, Tenn.

3. It is further ordered, That said defendant be, and it is hereby, notified and required to establish, on or before the 15th day of July, 1910, and maintain in force thereafter during a period of not less than two years, rates for the transportation of articles in the numbered classes of the Southern Classification from Cincinnati, Ohio, to Chattanooga, Tenn., which shall not exceed the following, in cents per 100 pounds, to wit:

Class	1	2	3	4	5	6
Rate	70	60	53	44	38	29

The C., N. O. & T. P. and the Commission filed demurrers to the bill. Subsequently the case was transferred to this court under the provisions of section 6 of the act to create a Commerce Court and to amend the act entitled "An act to regulate commerce," and the cause has now been submitted for decision upon the bill and demurrers.

The bill of complaint is quite voluminous, consisting, exclusive of exhibits, of 66 printed pages. The material allegations, however, which in our judgment are necessary to be considered in order to dispose of the case may be stated briefly as follows:

shippers were invaded thereby. The fixing of the schedule of rates complained of was a legislative act.

Munn v. Illinois, 96 U. S., 113.

Peil v. Chicago N. W. Ry. Co., 94 U. S., 164.

Express Cases, 117 U. S., 1.

C. M., etc., Ry. v. Minnesota, 134 U. S., 418.

Reagan v. Farmers' Loan & T. Co., 154 U. S., 362.

St. L. & S. F. Ry. Co. v. Gill, 156 U. S., 649.

C., N. O. & T. P. Ry. Co. v. I. C. C., 162 U. S., 184.

T. & P. Ry. v. I. C. C., 162 U. S., 197.

I. C. C. v. Cincinnati Ry. Co., 167 U. S., 479.

Railroad Commission Cases, 116 U. S., 307.

Smyth v. Ames, 169 U. S., 515.

Chord v. L. & N. R. R. Co., 183 U. S., 483.

Alpers v. City of San Francisco, 32 Fed., 503.

So. Pac. Co. v. R. R. Commissioners, 78 Fed., 236.

New Orleans Water Works Co. v. New Orleans, 164 U. S., 471.

Atlantic Coast Line v. North Carolina Corporation Com., 206 U. S., 1.

And while we are of the opinion that our power to review the order of the Commission fixing a schedule of rates is coextensive with the limits of the protecting shield of the Constitution, still it must clearly appear that such protection in some degree has been taken away. The Commission found that the rates complained of were not clearly excessive. Much less are we able to find that the rates authorized by the Commission in the order complained of and which were a reduction of the former rates are clearly excessive. In making this statement we are fully aware of the allegation of the bill as to the net earnings of the C., N. O. & T. P., and the whole case as to the excessive feature of the rates fixed by the Commission is almost entirely based upon the earnings of the C., N. O. & T. P. While earnings may be considered in the fixing of a reasonable rate to be charged by a carrier for the transportation of freight, rates necessarily can not be based upon earnings alone. This is made clearly to appear when we consider that a just and reasonable rate is one which is just to the carrier and to the shipper. It is a rate which yields

and the Nashville, Chattanooga & St. Louis roads is a third longer, or 450 miles, and both of these roads have more or less unremunerative branch lines. And yet the Commission have not only put the two routes on an equality, but have even considered the influence of unprofitable branches, which have to be taken care of, fixing a rate which shall be fair for the whole system, and not simply for the immediate section of road which is involved. This, in my judgment, they had no right to do. The shipper is entitled to a just and reasonable rate, having regard to the service which is to be rendered by the carrier that is to perform. And this service is largely to be measured by the facilities for economically rendering it, which are possessed by that particular road. It is not to be augmented or kept up, beyond what is fair and just, by the consideration of what some other road, not so favorably situated, may need.

The order of the Commission, being based upon mistaken and erroneous grounds, is therefore invalid and should be so declared. (*Southern Railway v. St. Louis Hay & Grain Co.*, 214 U. S., 297; *Inter. Com. Com. v. Stickney*, 215 U. S., 98; *Southern Pacific Railway v. Inter. Com. Com.*, 219 U. S., 833.) And the case should be thereupon remanded to the Commission in order that a rate may be fixed which shall be just and reasonable as respects the respondent carrier, by whom the services are to be performed. This does not take from the Commission the right to say what that rate shall be. Much less does it involve the determination of the rate by the Court. It merely disposes of the rate which has been mistakenly made, as preliminary to a new consideration of it by the Commission upon correct and proper grounds. (*Cin., N. O. & T. P. R. R. v. Inter. Com. Com.*, 162 U. S., 184, 238, 239; *Southern Railway v. St. Louis Hay & Grain Co.*, 214 U. S., 297.)

I therefore dissent from the judgment of the court, sustaining the demurrer and dismissing the bill.

MACK, Judge :

I concur in the above dissent.

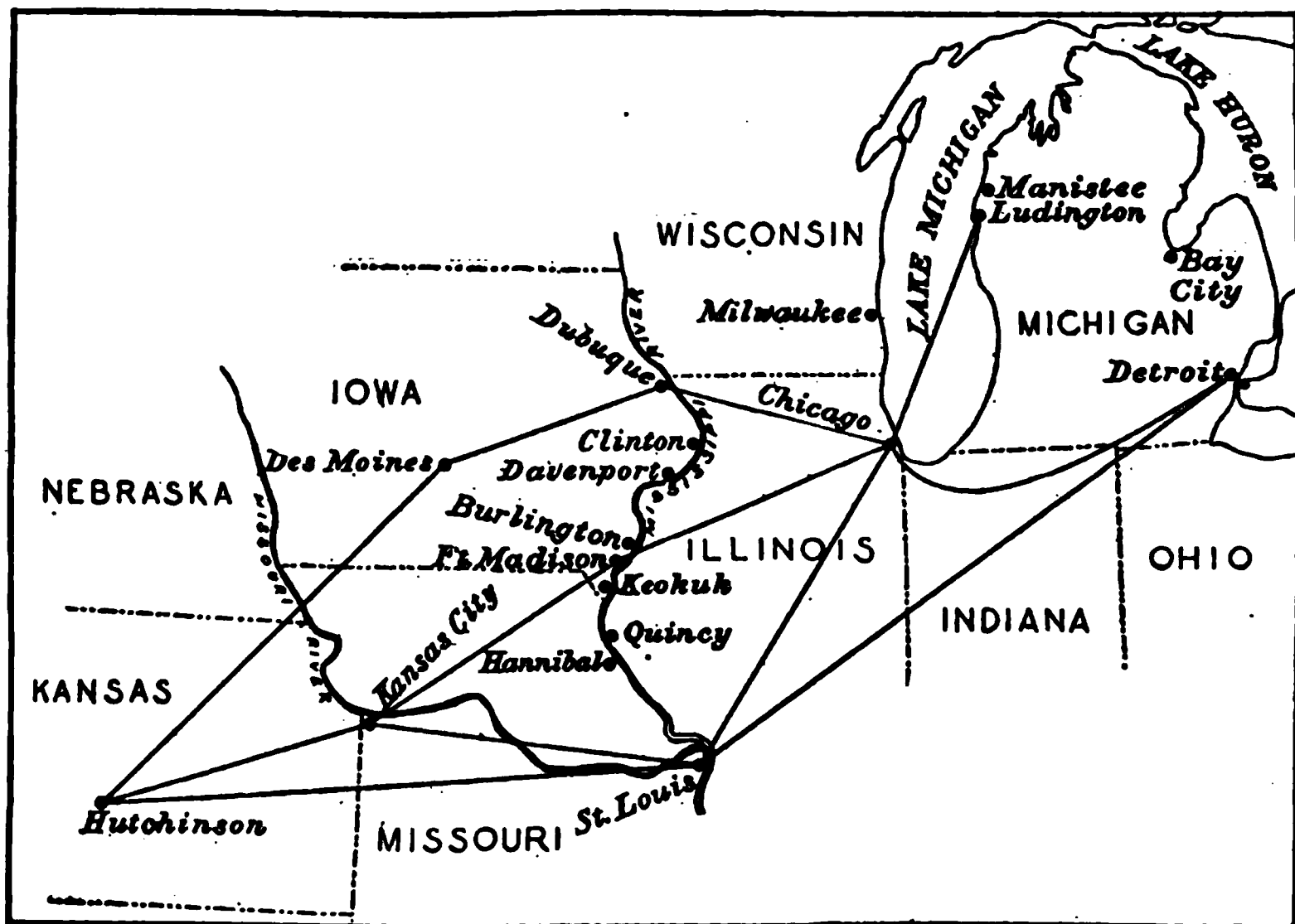
VII

COMMERCIAL COMPETITION: RATES ON SALT

RAILROAD COMMISSIONERS OF KANSAS *v.* ATCHISON, TOPEKA & SANTA FÉ RAILWAY¹

PROUTY, *Chairman*:

This proceeding involves the relative distributive rates on salt from the Kansas as compared with the Michigan field into



intermediate territory. The situation will be best understood by a glance at the accompanying map.

The Kansas salt field extends about 120 miles north and south by some 60 miles east and west. Hutchinson is situated near the

¹ Decided February 5, 1912. 22 I. C. C. Rep. 407-419. The original case, 5 *Idem*, 299, was reprinted in the first edition of *Railway Problems*, p. 190.

center of this field and may be selected as typical of the whole field. Rates from all points of production in this field to the disputed territory are the same, there being therefore no competition in the rate between different points of production in this field.

The Michigan field covers nearly the entire lower peninsula of the state of Michigan, extensive salt works being located at Ludington, Manistee, Bay City, Port Huron, Detroit, Saginaw, and some other points. This field is therefore more extensive than the Kansas field. Rates at the present time are substantially the same from all points in the Michigan field to the destinations in controversy; but, owing to conditions of transportation, which will be later referred to, there has been in the past active competition in rates between the Michigan points of production themselves, which has produced, at times, differences in those rates, some vestiges of which still remain.

It will be seen by reference to the map that as salt moves from the Kansas field east and northeast it meets salt moving from the Michigan field in the opposite direction, the debatable ground being, roughly speaking, between the Mississippi and the Missouri rivers. The cost of producing salt in Kansas and Michigan is substantially the same. The quality of the salt is about the same, although this record indicates that at the same price the Michigan salt sells somewhat more freely. Whether, therefore, this intermediate territory shall be supplied from Kansas or Michigan depends mainly upon the rate of transportation.

This proceeding is instituted by the Kansas railroad commission in the interest of the salt producers of that state, and the complaint is:

1. That the rates from the Kansas field into this disputed territory are unreasonable in and of themselves.

2. That these rates are unduly high in comparison with corresponding rates from the Michigan field.

Certain salt producers in Kansas have intervened in favor of the prayer of the complainant, and certain producers in the Michigan field against it, so that the whole situation is before us.

In support of its contentions the complainant relies first and largely upon the fact that under the present rates Kansas

producers are not only unable to increase their production, but can not even maintain that of recent years, while production in the rival Michigan field is increasing; and this phase of the case may be referred to before proceeding to a discussion of the rates themselves.

This record does not show in a very satisfactory way the relative production of these two fields, past and present. When this same matter was before the Commission in 1891 it appeared that production in the Kansas field was about 1,000,000 barrels annually, as compared with 4,000,000 barrels in the Michigan field, while it now appears that in 1909 the corresponding figures were 2,500,000 Kansas, 6,000,000 Michigan. If, therefore, we compare the present with 20 years ago the percentage of development has been in favor of Kansas.

It is said, however, that in 1891 the Kansas field was in its infancy, and this record indicates that for the last few years there has been little increase in the Kansas field, while Michigan production has shown a substantial advance. It is suggested that this is due, not to any undue advantage which Michigan enjoys into this territory, but rather to the fact that other sources of production have been developed to the south and west of Kansas, which have limited its market in those directions.

This Commission has often said that it can not require of carriers the establishment of rates which will guarantee to a shipper the profitable conduct of his business. The railway may not impose an unreasonable transportation charge merely because the business of the shipper is so profitable that he can pay it; nor, conversely, can the shipper demand that an unreasonably low charge shall be accorded him simply because the profits of his business have shrunk to a point where they are no longer sufficient.

The effect of a rate upon commercial conditions, whether an industry can exist under particular rates or a particular adjustment of rates, are matters of consequence, and facts tending to show these circumstances and conditions are always pertinent. But they are only a single factor in determining the fundamental question. A narrowing market, increased cost of production,

overproduction, and many other considerations may render an industry unprofitable, without showing the freight rate to be unreasonable.

A reduction in the rate on salt from the Kansas field to these points in controversy would not increase to any appreciable extent the total amount of salt consumed, but a reduction from the Kansas field with no corresponding change from the Michigan field would throw the business to the complaining interests. The question is not what rate the traffic will bear, for the rate is already sufficiently low to move the traffic to its limit from either Kansas or Michigan, but is rather one of relative adjustment. Kansas shippers have a right to demand of these defendants who serve them rates which are first of all reasonable in and of themselves, and, next, rates which, in so far as these defendants can properly control the situation, are fairly adjusted with respect to these rival fields of production.

The inherent reasonableness of the rates in controversy will be first considered.

The original complaint directed attention especially to the rate from the Kansas field to St. Louis. That rate then was and now is $13\frac{1}{2}$ cents per 100 pounds for a distance of approximately 500 miles. Is this unreasonable *per se*?

Salt is very desirable traffic from a transportation standpoint. It loads heavily, is not liable to loss or damage in transit, can be handled at the convenience of the carrier, and affords a uniform business. Its value is comparatively little, being from \$1.50 to \$2 per ton at the point of production. While not consumed as largely as coal, cement, brick, and similar commodities, and while therefore the freight rate is not so noticeable, it is an article of universal and necessary consumption. All these considerations call for a low rate of transportation, and have been repeatedly recognized by this Commission. It is also true that the ability of a particular producer to sell in a given market has depended largely upon the cost of transportation, and this in turn has operated to force down rates generally, so that salt rates in this territory, certainly, have been established by the voluntary action of the carriers at a low level. Notwithstanding, however, all these

It will be seen upon a reference to the map that the salt-producing points of Michigan are located mainly upon the water. They are, upon the western side of the peninsula, Manistee and Ludington upon Lake Michigan, and upon the eastern side, Bay City, Port Huron, Wyandotte, and Detroit upon Lake Huron. It was said in testimony that salt was produced in Michigan, in quantities, at but a single interior point, Saginaw, which lies in close proximity to the water.

The distance from Ludington and Manistee to Milwaukee and Chicago is from 100 to 150 miles. It appears from this record that salt has for many years been transported from these points of production by water to both Milwaukee and Chicago. Much of this transportation is in boats owned by the producers of the salt; but there is to-day, and for some time has been, a regular tariff of the Pere Marquette steamers naming a rate of $2\frac{1}{3}$ cents from both these producing points to Milwaukee and Chicago.

While it does not appear under what circumstances salt is carried from ports upon Lake Huron to Chicago and Milwaukee nor the cost of the transportation, it does appear that the salt produced at these Lake Huron ports moves mainly by water. The testimony shows that 80 per cent of all the salt manufactured in Michigan starts upon its journey by water, and it was said that 90 per cent of the salt going into this contested territory moved by lake and rail.

It can not, therefore, be doubted and must be assumed, that this Michigan salt can be laid down in Chicago or Milwaukee for $2\frac{1}{3}$ cents per 100 pounds. The cost of reaching any particular point of consumption can not exceed the rate from these two railroad centers plus $2\frac{1}{3}$ cents for the water carriage.

The distance from Chicago to St. Louis by the short line is 278 miles. Several different lines of railway connect these great commercial centers, and competition for business by these different routes is, and always has been, most active. It appears that the rate on salt from Chicago to East St. Louis was for a long time $6\frac{2}{3}$ cents per 100 pounds. The local rate on package salt is now 9 cents per 100 pounds, the rate on bulk salt the same.

VIII

RELATIVE RATES

THE EAU CLAIRE LUMBER CASE¹

KNAPP, *Commissioner* :

* * * * *

1. The complainant, the Eau Claire Board of Trade, is an association of citizens and residents of the city of Eau Claire, Wisconsin, organized to promote the business interests of that city. The defendant railroad companies are severally common carriers engaged in the interstate transportation of lumber and other freight. The sources of supply of the west-bound lumber shipped over these roads are the forests of northern Michigan, Wisconsin and Minnesota; and the main points from which such shipments are made are Minneapolis, Eau Claire, Winona, La Crosse, Oshkosh, Milwaukee and Chicago, and the following towns on the Mississippi river, south of La Crosse, to wit: Dubuque, Clinton, Lyons, Fulton, Moline, Rock Island, Davenport, Muscatine, Burlington, Keokuk, Hannibal and Louisiana. The market or distributing towns to which these shipments are made are for the most part the "Missouri river points," Sioux City, Omaha, Council Bluffs, St. Joseph and Kansas City.

2. No one of the defendant roads reaches all these points of production. From Eau Claire shipments of lumber are made to the Missouri river over the Chicago, Milwaukee & St. Paul, the Chicago, St. Paul, Minneapolis & Omaha, and the Wisconsin Central. The Chicago, Milwaukee & St. Paul road, (hereinafter designated the "Milwaukee,") has main lines as follows: from Chicago to Council Bluffs; from Marion, Iowa, on said former

¹ Decided June 17, 1892. Interstate Commerce Commission Reports, Vol. V, pp. 264-298. For significant features of this case, consult Ripley's Railroads: Rates and Regulation. (Index.)

Being situated nearer the pine forests, the sources of timber supply, and at the confluence of two rivers which penetrate those forests, the Eau Claire and Chippewa, it appears to have natural advantages over its neighboring competitors. . . . After lumber is in the raft, the cost of its transportation by water down the Mississippi is less than for the same distance by rail; but, including the rafting and preceding expenses, the testimony is to the effect that lumber can be shipped from Eau Claire by rail direct to Missouri river markets at as little if not less, cost than it can be floated to Mississippi river points and thence transported by rail to those markets. The railway companies whose lines run from Chicago across the Mississippi to the Missouri river territory naturally desire that lumber be carried by water down the Mississippi to shipping points on that river, and be thence shipped over their roads to the Missouri river markets. The Omaha road is also interested in maintaining high lumber rates at Eau Claire, because of an agreement between that road and the purchasers of its timber lands in northwestern Wisconsin, by which those purchasers bound themselves to ship over its line the timber from such lands, (which is further from the Missouri river markets than Eau Claire timber), on condition of receiving the same rates as might be charged by that road on such shipments from Eau Claire.

6. The rates from Eau Claire and the other shipping points to the Missouri river markets are based on the rate from Chicago, being certain differentials over or under that rate, and the same rate is made from any one of the shipping points to all the Missouri river markets, although the distances to the latter vary materially. * * * * *

In the early history of the lumber industry in this territory the principal points of competition were Chicago on the one hand, and St. Louis, Hannibal and Louisiana on the other. Chicago received its lumber from Michigan by way of the lake, and the other towns received theirs by way of the Mississippi. As railroads were built from time to time into the northern pineries, and numerous towns engaged in the manufacture of lumber, the conflict of rates increased and much uncertainty and

applied to the rates from Chicago of ten and fifteen cents, respectively; also the present rates as announced by the tariffs of the Western Freight Association: [Abridged. — ED.]

	RATES UNDER BOGUE DIFFERENTIALS		PRESENT RATES AS PER TARIFFS OF WESTERN FREIGHT ASSOCIATION
	Cents	Cents	Cents
Chicago	10	15	15
Minneapolis	12	17	17
Eau Claire	16½	21½	21½
Winona	11	16	16
La Crosse	11	16	16
Oshkosh	15½	20½	20½
Rock Island	6½	11½	13
Burlington	5½	10½	11½
St. Louis	3½	8½	8½

While these rates are based on the Chicago rate, it appears that the building of large sawmills at other points, and the extension of railways into the timber regions of the northwest, have, to a large extent, withdrawn from Chicago the business of supplying lumber to western markets. Chicago, however, does as large a business as heretofore in supplying its local demand

DISTANCES BY SHORT LINES

FROM	TO SIOUX CITY	TO COUNCIL BLUFFS	TO ST. JOSEPH	TO KANSAS CITY
	Miles	Miles	Miles	Miles
Chicago	517	488	479	458
Eau Claire	358	457	586	605
Winona	328	427	556	560
La Crosse	356	443	546	540
Minneapolis	263	362	491	531
Oshkosh	580	604	655	647
Rock Island	416	317	319	337
Burlington	355	291	273	341
St. Louis	511	412	307	277

and in shipping east. Lumber from Oshkosh is also shipped extensively through Chicago to the east; and it appears that the western shipments from both Chicago and Oshkosh are mainly the surplus remaining after eastern markets have been supplied. * * * * *

10. As before stated, Minneapolis, Winona and La Crosse are on the main line of the Milwaukee road from Chicago to Minneapolis, while Eau Claire is 48 miles distant from the main line on a branch road from Wabasha. On an average there is a train and a half each way per day on this branch road, which is about one tenth of the business of the main line. This branch road is comparatively level, with no difficult grades, and the cost of "physical movement" of a train over it is not greater than over the main line. It appears, however, that a full train cannot always be made up on this branch line, and hence engines employed there cannot always be utilized to their full capacity. As a general rule the operating expenses per ton per mile are greater on branch than on main lines. Eau Claire is, however, on the main line of the Omaha road, and is reached by the Wisconsin Central and other roads hereinbefore named. Oshkosh is also on a branch of the Milwaukee road about 40 or 50 miles from the main line. It may be stated as in the nature of an admission that Mr. E. P. Ripley, Third Vice President of the Milwaukee road, testified that he knew of no "conditions that should make the rate higher from Eau Claire than from Oshkosh except that Eau Claire is nearer the lumber-producing territory and perhaps may be said to be able to pay more," and that "there are no dissimilar conditions existing at Winona, La Crosse and Minneapolis as compared with Eau Claire which would justify the charge of a higher rate per car per mile on lumber from Eau Claire to the Missouri river points than from the points first named, except that they are farther from the supply and it costs more to get the logs there." * * * * *

11. The average weight of a car load of lumber being about 35,000 lbs., the total freight per car load to Missouri river points, under the Bogue differentials, is about \$75.25 from Eau Claire; from Winona and La Crosse about \$56.00, from Minneapolis

A brief examination of the findings discloses the reasons for this anomalous situation. At a number of places on the Mississippi south of La Crosse, the manufacture of lumber is extensively carried on, the timber from which it is produced being mainly obtained along the tributary streams north of that point. Each of these towns is connected with the Missouri river by one or more of the defendant railroads other than the Milwaukee. These towns compete in the same markets with the lumber-manufacturing districts nearer the timber supply, and they naturally desire to retain and develop an industry in which they are so largely interested. The railroads extending westerly from those places are equally anxious for the traffic which this industry supplies, and they appear to have some advantage over their northern competitors in shorter distances and greater aggregate tonnage. Any reduction, therefore, in the rate established at Eau Claire, which would tend to increase the output of lumber in that locality at the expense of lumber towns more remote from the forest sources, is deemed by those towns and the carriers identified with them inimical to their common interests, and meets, almost as a matter of course, their combined opposition. Under these circumstances it is obvious that the lumber-carrying roads which do not reach Eau Claire, and which are quite independent of the Milwaukee system, *have it in their power* to perpetuate the inequality of which that town complains by making a reduction in rates from other points equal to any reduction which the Milwaukee company may make at Eau Claire. This in substance is the excuse offered by the original defendant for maintaining rates on lumber shipments from Eau Claire which it admits to be relatively unjust, and its request that other carriers acting under the Bogue award be made parties to the proceeding was an indirect invitation to them to answer the accusation of the complainant.

So far as the defense interposed by these parties goes to the merits of the controversy, it rests ultimately upon two propositions. One is, that under the schedule of rates fixed by the Bogue arbitration Eau Claire is now paying less for the transportation in question than the lower Mississippi towns, *in*



it with the rates from the neighboring towns, similar in size, situation and volume of competing traffic, and at approximately the same distance from common markets. Bearing in mind, also, that since this investigation was commenced all these rates have been advanced by an addition equal to fifty per cent of the rate upon which the others were based, viz., the ten-cent rate from Chicago to the Missouri river, we deem it quite unsuitable to attempt the correction of the inequality complained of by ordering a further advance in the rates from competing points in the vicinity of Eau Claire. For this reason it is unnecessary to discuss the power of the Commission, in dealing with discriminations between different localities, to require an increase in rates deemed relatively preferential.

The further general argument against a reduction of the Eau Claire differential does not persuade us that the present rate should be continued. This impression involves some consideration of the Bogue award as it affects the town making this complaint, and the consequences to be apprehended from lowering the lumber rate at that point. The most noticeable fact in this connection is that the results apparently experienced do not accord with the principle upon which that award avowedly proceeds. Mr. Bogue expressly declares the question to be, "What rate will enable each line party to this arbitration to place its fair proportion of lumber in the territory under consideration?"

✓ This appears to us equivalent to asking, "What rate will enable each town in this territory to place its fair proportion of lumber in the common markets?" for the arbitrator surely did not intend to imply that a "line" which, as compared with some rival road, gets its "fair proportion" of lumber tonnage, taking into account the aggregate shipments from all the towns which it serves, may so discriminate *between those towns* as to stimulate production at one and prevent it at the others. The Milwaukee road, for instance, may have a "fair proportion" of the lumber business under the present schedule, but that circumstance furnishes no reason for favoring La Crosse and Winona at the expense of Eau Claire. It could not have been the design of Mr. Bogue to equalize this traffic between the railroads without regard to the

interests of competing localities, and his award does not appear to have been so interpreted by the carriers. What he evidently intended was that lumber should cost the producer approximately the same *when delivered at destination*, whether manufactured at one place or another. Increased charges for transportation were to offset advantages of location or other natural facilities for cheap production. In this way the tonnage was to be fairly divided between the roads, and the prosperity of all these towns secured by enabling them to compete on an even footing in the common markets. But the rate prescribed for Eau Claire hardly permitted a result consistent with this theory. As it seems to us, this town has been placed at a manifest disadvantage. So far from enjoying equal opportunity with its rivals, it appears to have been overweighted with a differential which has excluded it, to a great extent, from the field of competition. A number of its establishments have gone out of business, its industrial development has been checked and its population seriously diminished. While neighboring towns have been prosperous, Eau Claire has not held its own. These adverse consequences may not have been caused by the operation of the Bogue award, but no other explanation is suggested. Obviously, such an outcome was not designed, and the fact that it has occurred indicates an injustice to this locality which ought to be corrected. ✓

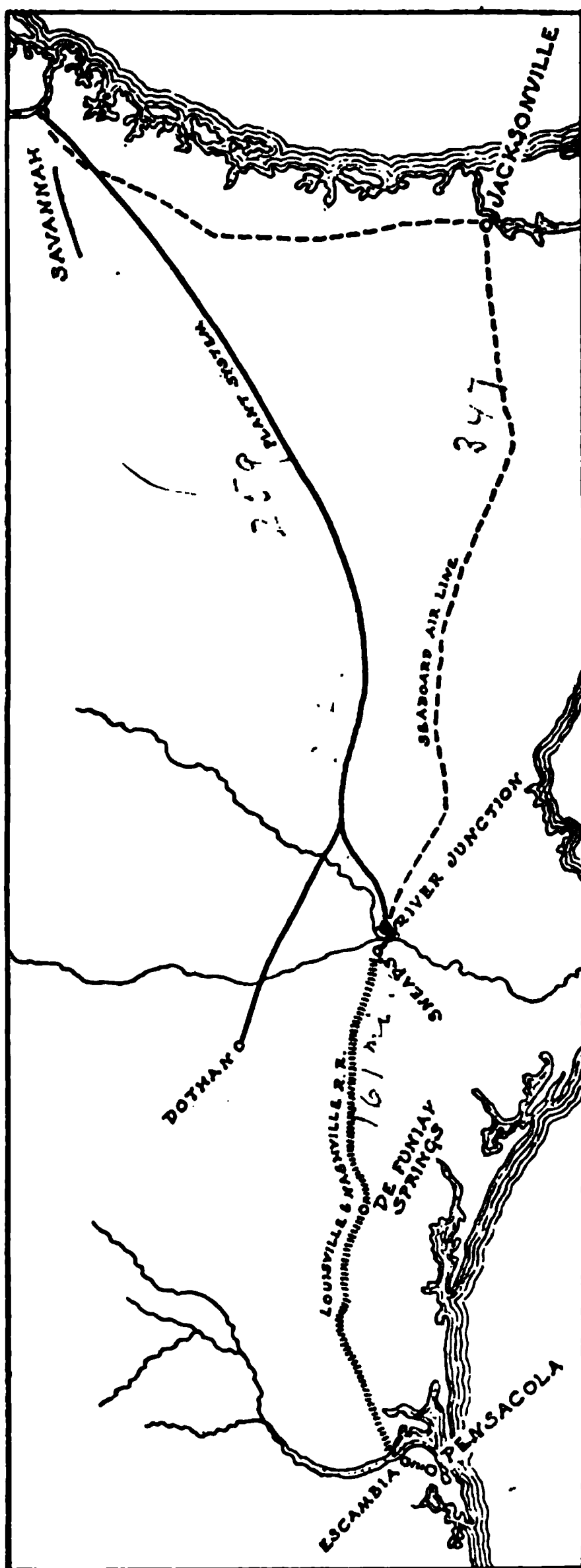
We are not to be understood as indorsing the principle which governs that award. On the contrary we consider it radically unsound. That rates should be fixed in inverse proportion to the natural advantages of competing towns, with the view of equalizing "commercial conditions," as they are sometimes described, is a proposition unsupported by law and quite at variance with every consideration of justice. ✓ Each community is entitled to the benefits arising from its location and natural conditions, and any exaction of charges unreasonable in themselves or relatively unjust by which those benefits are neutralized or impaired, contravenes alike the provisions and the policy of the statute. There is no occasion for enlarging upon this point, as it is only incidentally involved in the discussion. Our chief object in commenting on the Bogue award in this connection is

to accept. No mathematical rule has been followed and no particular theory applied, but that rate has been selected which, on the whole, best satisfies our judgment. To a certain extent our determination is arbitrary, but equally so is the fixing of a rate in the first instance. As the injustice which Eau Claire suffers arises mainly from the lower rates at La Crosse and Winona, the rate from the former should bear a fixed and permanent relation to the rates from the latter, independent of the Chicago rate upon which all the others are based under the Bogue arbitration. Taking everything into account, we think the rate from Eau Claire should not exceed the rate from La Crosse and Winona by more than 2 cents per hundred pounds, when the latter rate is not over 11 cents per hundred; and that such excess over the present rate of 16 cents from La Crosse and Winona should not be greater than $2\frac{1}{2}$ cents per hundred. Compared with the 16-cent rate now in force at these competing towns the rate thus fixed for Eau Claire will be higher by \$8.75 per car; and the rate per car per mile and per ton per mile to the several Missouri river markets will still be considerably greater from Eau Claire than from La Crosse or Winona. All things considered, however, we believe that an addition of $2\frac{1}{2}$ cents to the present rate from those places will not be unjust to Eau Claire, and that a greater reduction in the differential now in force against that town should not at this time be required. If the operation of this rate fails to give equitable results, the complainant will not be debarred from making a further application for relief. * * *

The order of the Commission is that from and after the tenth day of July, 1892, the Chicago, Milwaukee & St. Paul Railway Company cease and desist from charging, collecting, or receiving for or on account of lumber transported by it, in car-load quantities, from Eau Claire, Wisconsin, to the various Missouri river points mentioned in this report, any greater sum or amount than two and one-half cents per hundred pounds more than shall or may from time to time be charged, collected or received by that company for the like transportation from the towns of La Crosse and Winona aforesaid.

miles. The distance from River Junction to Pensacola is 161 miles, and as Pensacola is distant from Mobile and New Orleans 104 miles and 245 miles, respectively, the distance from River Junction to Mobile and New Orleans is 265 miles and 406 miles, respectively.

The Pensacola & Atlantic division lies wholly within the State of Florida. It was built by the Pensacola & Atlantic Railroad Company with the assistance of the Louisville & Nashville Railroad Company, and subsequently purchased under a mortgage sale by the latter company. The State of Florida granted to the Pensacola & Atlantic Railroad Company 3,890,619 acres of land. This company had sold of said grant up to June 12, 1891, 668,590.05 acres for \$552,330.50. The Louisville & Nashville Railroad Company from June 12, 1891, to April 30, 1897, sold 571,985.85 acres for \$16,503.76. Some of the deeds, however, were



canceled, and the total net sales by both roads amounted on April 30, 1897, to 995,481.34 acres for \$860,343.65.

According to a statement put in evidence for the defense, the Pensacola & Atlantic, considered as a distinct line, does not earn sufficient to pay operating expenses and interest on its fixed charges. It appears that the Louisville & Nashville has been operating the road since the beginning of the year 1885, and that it bought the property under foreclosure sale in May, 1891. The road is operated in connection with the other portions of this large system, and serves as a connection with the Plant System and Florida Central & Peninsular in Florida. The Louisville & Nashville Railroad Company is solvent and prosperous. It has increased its funded debt from \$79,158,660 in 1895 to \$110,693,660 in 1899, and during the fiscal year ended June 30, 1899, it paid its accruing funded debt obligations and declared a dividend of $3\frac{1}{2}$ per cent on its stock. The amount of stock outstanding was reported at \$54,911,520.

3. West Florida, through which the Pensacola & Atlantic division runs, is very sparsely settled between Pensacola and River Junction, the termini of the road, there being, according to the census of 1890, no town on the line except the city of Pensacola, with a population of 1000 inhabitants. The volume of traffic originating along the road is comparatively small. The principal articles received for shipment are cotton, naval stores and lumber. Some wool and a few melons are also shipped. According to the census of 1890 Pensacola had a population of 11,750 inhabitants and Savannah a population of 43,189. Lumber from Pensacola & Atlantic stations is shipped principally to Pensacola, one of the largest markets for exporting lumber in sail vessels along the coast. Savannah, Ga., is the largest naval-stores market in the world, while Pensacola is a small market for rosin and turpentine, receiving these commodities principally from stations on the Louisville & Nashville system.

* * * * *

5. The Louisville & Nashville Railroad Company does not own or control any line of road entering Savannah. In the transportation of cotton or naval stores to Savannah from

Pensacola & Atlantic stations the interest of that company ends with the delivery to its connection, the Savannah, Florida & Western Railway Company or the Florida Central & Peninsular Railway Company, at River Junction. The only revenue it can receive from east-bound shipments is for the short haul to River Junction. The conditions are reversed on traffic going westward.

Most of the naval stores shipped from Pensacola & Atlantic stations westward are ultimately destined to interior points, such as Louisville, Cincinnati and Chicago, and on these shipments the Louisville & Nashville generally receives a long haul from Pensacola. The Louisville & Nashville therefore has a substantial interest in having this freight move west to or through Pensacola instead of east *via* River Junction to Savannah or other destinations, and its rates are made with a view of inducing such westward movement. Efforts to build up the naval-stores industry on the Pensacola & Atlantic division had failed until about two years prior to the filing of the complaint in this case. At that time the Pensacola naval-stores firm began business, and the Louisville & Nashville put in a lower schedule of rates from stations on that division, pursuant to an agreement it had made with the Pensacola firm. The rates to Savannah were not raised when the rates to Pensacola were reduced. A result of such action on the part of the railroad company has been to largely increase the volume of shipments of this class of traffic to Pensacola. The proportion of the total product of rosin and turpentine at the Pensacola & Atlantic stations which formerly went to Savannah has decreased under present rates, so that very little of either commodity is shipped to Savannah. ✓

A former agent of the railroad company at a station on the Pensacola & Atlantic division testified that his salary was made to depend in some degree upon whether these shipments were sent west or east, that he received a larger commission when the traffic was destined west. There is evidence to the effect that shippers have had difficulty in ascertaining the rates in force on shipments to Savannah, and also that solid car loads of rosin or of turpentine were required when the destination was Savannah,

to and from Pensacola. The Louisville & Nashville has in effect a special rate over its own line of 25 cents on turpentine from Pensacola to Evansville, Ind., a distance of 621 miles. This is no more than the share it exacts out of the through rate to Savannah from points on the Pensacola & Atlantic division for which it carries the turpentine no greater distance than 155 miles from Bohemia to River Junction, and its haul to River Junction may be as low as 6 miles. The Louisville & Nashville rates to Pensacola are intended to draw naval stores to that market for sale and subsequent reshipment, and the Louisville & Nashville secures the carriage of all shipments from Pensacola. The roads to Savannah make naval-stores rates low to Savannah, not for consumption there, but because it is a market, a point of concentration and reshipment, for such stores. A large part of the domestic shipments of this traffic from Savannah is shipped north by water, and the Plant System and Florida Central & Peninsular must share the rail shipments from Savannah with the other roads entering that city. The Louisville & Nashville can justly claim that its rates on naval stores to the near-by market of Pensacola from these Pensacola & Atlantic division stations, as compared with the through rate to Savannah, the much more distant market, should give some advantage to Pensacola, which it has contributed largely to build up as a concentrating point for these commodities.

* * * * *

11. Both upland and sea-island cotton are produced along the line of the Pensacola & Atlantic division, and about 10 per cent of the crop is of the long staple or sea-island variety. The sea-island grade is generally worth 3 or 4 cents a pound more than upland cotton. Most, if not all, of the sea-island cotton appears to go to Savannah. During the year 1896-97 the shipments of cotton from Pensacola & Atlantic stations to Savannah, New Orleans and Mobile were as follows: To Savannah, 4077 bales; to New Orleans, 8718 bales; to Mobile, 2021 bales. Pensacola is not a cotton market and practically no cotton is shipped to that point. The rate on cotton from Pensacola & Atlantic stations to Savannah at the time of complaint and at the date of the

hearing in this case was \$2.75 per bale, and the bale is estimated to weigh 500 pounds. This resulted in a rate of 55 cents per 100 pounds. The rate applied from all stations and had been in effect for a number of years. The Louisville & Nashville share of the \$2.75 rate was \$1.75 per bale for its haul to River Junction, while connecting roads only received \$1.00. There are no compresses on the Pensacola & Atlantic division, and if the cotton was compressed by the carrier in transit it was done by the road east of River Junction. Notwithstanding the blanket-cotton rate from Pensacola & Atlantic stations to Savannah is challenged by the complaint in this case, that rate was increased by the defendants after the hearing from \$2.75 to \$3.30 per bale, and if for export the rate was still higher, \$3.45 per bale. The special export rate was afterwards canceled, and the rate to Savannah for all purposes is now \$3.30 per bale of 500 pounds. From most stations on the Pensacola & Atlantic division the rate to Pensacola was \$1.50 per bale of 500 pounds. A few stations comparatively near Pensacola, including Galt City and Escambia, took rates of 26 and 27 cents, the former being the lowest rate to Pensacola. These rates were also in effect at the time of the hearing.

The rate on cotton from all Pensacola & Atlantic stations to Mobile was, at the time of the complaint, and still is, \$2.00 per bale, and to New Orleans it was and still is \$2.50 per bale. The rates to Mobile and New Orleans commence with Escambia, 10 miles from Pensacola, and include River Junction, 161 miles from Pensacola. The distance from Escambia to Mobile is 114 miles and to New Orleans 255 miles. From Sneads, 6 miles west of River Junction, these distances are 259 miles to Mobile and 400 miles to New Orleans. From Escambia to Savannah the distance is 410 miles, and the distance from Sneads to Savannah is 265 miles. From De Funiak Springs, a central point on the Pensacola & Atlantic division, the distance to Mobile is 183 miles and to New Orleans 324 miles. That point is distant from Savannah 341 miles. The Louisville & Nashville obtained \$1.75 out of the former rate to Savannah, and it actually gets as much or more out of the higher rate now in force. It received

The Louisville & Nashville insists that the near-by market of Pensacola is entitled to all of this great advantage.¹ It claims that the lower rates to Pensacola were necessary to create a market there for these stores, and, further, that the carriage to Pensacola is only part of its haul on the great majority of the shipments, while on shipments to Savannah it can only have the short haul to River Junction, where it must turn the traffic over to one of its connecting roads. Whatever difference in rates may have seemed necessary at the outset to create a demand in the Pensacola market, it is apparent now, after several years' trial, that the rates to Savannah as compared with the Pensacola rates give an unwarranted advantage to Pensacola. In endeavoring to build up a near-by market at Pensacola, and so furnish these products with a market in addition to the one existing at Savannah, the Louisville & Nashville was acting in the interest of producers of and dealers in naval stores on its Pensacola & Atlantic division. It went beyond this, however, and so controlled the adjustment of rates to the two markets as to give Pensacola a practical monopoly of the trade. A carrier cannot lawfully establish and maintain an adjustment of rates which in practice prevents shippers on its line from availing themselves of a principal market which they have long been using, and confers a substantial monopoly upon a new market in which, for reasons of its own, it has greater interest. That is what has been done in this case.

- ✓ The further and perhaps chief ground relied upon to justify this abnormal relation in rates on traffic which is competitive mainly as between Savannah and Pensacola is that the present lower scale of rates to Pensacola is required to hold the traffic for long hauls on the Louisville & Nashville system. This company can and does make through rates on naval stores from its Pensacola & Atlantic division *via* Pensacola to numerous points. Its claim goes further than this, however. It also aims to compel shipments locally to Pensacola, that it may get the benefit

¹ The conclusions of the Commission as to rates on naval stores are so interwoven with those relating to cotton rates that they are reproduced in full.

of the reshipments from that point, and it has the only railroad entering that city. A shipment billed and transported to Pensacola for local delivery there constitutes a complete transaction, just as a shipment billed and transported for delivery in Savannah is a complete transaction. As between two transactions of this character the Louisville & Nashville may prefer itself in the matter of rates to the extent of its fair interest as a common carrier, but it can no more be permitted to create a monopoly in its west-bound movement as compared with the east-bound than Pensacola can be permitted as a new market to have a monopoly of the traffic, and so shut out the old market of Savannah. We hold, in other words, that when a carrier makes rates to two competing localities which give the one a practical monopoly over the other because it can secure reshipments from the favored locality and none from the other, it goes beyond serving its fair interest, and disregards the statutory requirement of relative equality as between persons, localities and particular descriptions of traffic.

Our ruling in *Colorado Fuel & Iron Co. v. Southern P. Co.*, 6 I. C. C. Rep. 488, bears upon this point. In that case the rate to San Francisco on iron articles produced at Pueblo, Colo., was prohibitive, while on iron shipped from Chicago to San Francisco the rate was low. The Southern Pacific was the delivering line in San Francisco on shipments from both Pueblo, and Chicago, but it would get a much longer haul on Chicago traffic sent over a circuitous route *via* New Orleans than it would on either Pueblo or Chicago traffic sent direct to San Francisco. The testimony tended to show that the Southern Pacific secured greater compensation if shipments came to San Francisco *via* New Orleans. The Commission held that inequality in the treatment of shippers, having no other justification than this end, was indefensible. ✓

The Louisville & Nashville insists also that it is unusual for a carrier reaching a seaport on its own line to make joint rates with another carrier which will divert traffic originating on its road to a rival seaport. In the view we take of this contention, it is unnecessary to discuss whether this is or is not a railway practice. It is not understood that the complainants are here asking for an order which will so divert traffic from Pensacola as to place

X

RELATIVE RATES

THE CHATTANOOGA CASE¹

(Map at p. 154, *supra*)

KNAPP, *Chairman*:

* * * * *

The complaint relates to the rates of the defendants on the six numbered classes of traffic and on a large number of commodities from Boston, Providence, New York, Philadelphia, and Baltimore to Chattanooga and Nashville, respectively, both by the direct lines to Chattanooga and *via* Chattanooga to Nashville, and by the lines *via* Cincinnati to Chattanooga and *via* Cincinnati to Nashville, and it charges:

First, That the rates to Chattanooga are unjust and unreasonable in themselves, in violation of section 1 of the Act to regulate commerce, which requires all rate charges for any service rendered in the transportation of property or in connection therewith to be reasonable and just and prohibits and declares unlawful every unjust and unreasonable charge.

Second, That the rates to Chattanooga are higher than for the longer haul through Chattanooga and 151 miles on to Nashville, and are in violation of the provision of section 4 of the Act to regulate commerce which declares it to be unlawful for any common carrier subject to the provisions of the Act "to charge or receive any greater compensation in the aggregate for the transportation of a like kind of property under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance."

¹ Originally decided March 12, 1904. Interstate Commerce Reports, Vol. X, pp. 111-147. Decision, originally rendered in favor of Chattanooga in 1892, was sustained by both the United States Circuit Court and the Circuit Court of Appeals; was then reversed by the Supreme Court (181 U. S. 29) under its interpretation of the law in the Alabama Midland case (*vide*, p. 378, *infra*), but without prejudice to the right of the Commission to reopen the case. This is the case as thus reopened. The dissenting opinion, herein reproduced, represents the claims of Chattanooga. Its larger significance is set forth in Ripley's Railroads: Rates and Regulation. (Index.) The special map on p. 229 will be found serviceable in the study of the case.

Third, That "the merchants and other business men of Chattanooga and Nashville, respectively, compete for business largely in the same territory; that the excesses of the Chattanooga rates over the Nashville rates amount in most, if not all, instances to a reasonable profit on the traffic and subject Chattanooga merchants to an undue or unreasonable prejudice or disadvantage in such competition and give Nashville an undue or unreasonable preference or advantage over Chattanooga in such competition, and that the rates in question to Chattanooga and Nashville are, therefore, in violation of section 3 of the Act to regulate commerce, which declares unlawful such undue or unreasonable prejudice or disadvantage and such undue preference or advantage."

It is alleged in the complaint that if there should be any difference in rates as between Chattanooga and Nashville, such difference should be made by making the Chattanooga rates lower than the Nashville rates, because, (1) of Chattanooga's greater proximity to the points of shipment, Boston, Providence, New York, Philadelphia and Baltimore; (2) of transportation by the Tennessee river to Chattanooga; and (3) of the greater number of rail lines which enter Chattanooga and compete for business from those cities to Chattanooga than enter Nashville and compete for such business to Nashville. * *

The defendants admit that the rates in question are higher for the shorter haul to Chattanooga than for the longer haul by 151 miles through Chattanooga to Nashville; that the rates are correctly set forth in the complaint and that they participate in those rates either as members of the lines to Chattanooga and through Chattanooga to Nashville, or as members of the lines through Cincinnati to Chattanooga and to Nashville, but they deny that those rates are in violation of either section 1, 3 or 4 of the law as charged in the complaint.

In justification of the lower rates from New York and other eastern seaboard cities to Nashville than to Chattanooga, it is alleged that those rates were primarily made by the Trunk Line roads through the Ohio river crossings, Cincinnati, Louisville and Evansville, "and are controlled by the following competitive circumstances and conditions: "

First, Water competition by the Hudson river, the St. Lawrence river, the Erie canal and the lakes, which fixes the rail rates from New York to

Chicago and to which latter rates, it is alleged, the rates from New York and other eastern seaboard cities to Cincinnati, Louisville and Evansville "are made to bear certain fixed relations."

Second, Water competition between Paducah and Evansville on the Ohio river, on the one hand, and Nashville on the Cumberland river, on the other, by means of boats on the Cumberland river which connect with boats on the Ohio river.

Third, Water competition from New York and the other eastern seaboard cities to Cincinnati, Louisville and Evansville by way of the ocean, the gulf and the Mississippi and Ohio rivers.

Fourth, Competition by ocean from New York and other eastern seaboard cities to Norfolk and Newport News, Virginia, and thence by the rail lines, the Norfolk & Western and the Chesapeake & Ohio railways, from those cities to Louisville, Cincinnati and Evansville.

It is alleged that the rates from said eastern seaboard cities to Cincinnati and Louisville having been fixed by these competitive circumstances and conditions, the rates from said eastern seaboard cities to Nashville cannot greatly exceed the rates to Cincinnati or Louisville added to the rates which can be obtained by steamboats from Cincinnati or Louisville over the Ohio and Cumberland rivers to Nashville, but that there is no effective open water route from the eastern seaboard cities to Chattanooga, nor from Cincinnati or Louisville to Chattanooga and the water competition which forces down the through rail rates from Cincinnati and Louisville, respectively, to Nashville, does not extend to Chattanooga.

It is further alleged that Nashville enjoys a position geographically which is not enjoyed by Chattanooga, being practically the center of a circle, of which Cincinnati, Louisville, Evansville, Cairo and Memphis may be regarded as points on the circumference, and that there is a large territory tributary to Cincinnati, Louisville, Evansville, Cairo and Memphis, south of the Ohio river, which is also tributary to Nashville, and the rate adjustment to Nashville relatively to the points specified above has been, is, and should be such as to enable it to do business in comparison with those cities.

The Southern Railway Company alleges in its answer that all rates from eastern seaboard cities to Chattanooga are fixed by the eastern lines and are made relative to the rates from

those cities to Atlanta, Rome, Birmingham and Anniston, which cities compete directly with Chattanooga in territory common to those cities and to Chattanooga, and that this is the basis upon which the Chattanooga rates are made.

The Louisville & Nashville road denies that it is engaged in the transportation of traffic *through Chattanooga* to Nashville.

* * * * *

It is also alleged in behalf of the defendants that the Chattanooga and Nashville rates are governed by different classifications; the Chattanooga rates by the Southern Classification and the Nashville rates by the Official Classification.

Facts

1. The defendants . . . are common carriers engaged as parts of through lines and under joint tariffs of rates in transporting traffic from New York and other eastern seaboard cities to Chattanooga and to Nashville.

2. The following table gives the rates in question from Boston, Providence and New York to Chattanooga and Nashville, respectively, on the six numbered classes in cents per hundred pounds, and also shows the excesses in cents per hundred pounds and per car loads of 30,000 pounds of the Chattanooga rates over the Nashville rates.

	1	2	3	4	5	6
Chattanooga	114	98	86	73	60	49
Nashville	91	78	60	42	36	31
Excess per 100 lbs. of Chattanooga rates	23	20	26	31	24	18
Excess per car load of 30,000 lbs. . .	\$69	\$60	\$78	\$93	\$72	\$54

The same excesses of the rates to Chattanooga over those to Nashville as are shown in the above table in rates from Boston, Providence and New York, exist under the rates from Philadelphia and Baltimore.

The following table [Abridged.—ED.] gives the rates in cents per hundred pounds from Boston, Providence and New York

to Chattanooga and Nashville, respectively, and the excesses of the Chattanooga rates over the Nashville rates on car loads of 30,000 pounds on a few commodities. Those rates are given as illustrating the differences in rates in favor of Nashville on the entire list of commodities.

COMMODITY RATES

Canned goods Boston and New York to Chattanooga, C/L	\$0.48
Canned goods Boston and New York to Nashville36
Difference on a car load of 30,000 pounds in favor of Nashville . .	36.00
Green coffee Boston and New York to Chattanooga, C/L60
Green coffee Boston and New York to Nashville36
Difference on a car load of 30,000 pounds in favor of Nashville . .	72.00
Agate ware Boston and New York to Chattanooga, C/L73
Agate ware Boston and New York to Nashville42
Difference on a car load of 30,000 pounds in favor of Nashville . .	93.00
Cartridges Boston and New York to Chattanooga, C/L60
Cartridges Boston and New York to Nashville42
Difference on a car load of 30,000 pounds in favor of Nashville . .	54.00

The same differences in rates in favor of Nashville as are shown in the above table in rates from Boston, Providence and New York, exist under the rates from Philadelphia and Baltimore.

The rates by all the lines to Chattanooga are the same and the rates by all the lines to Nashville are the same.

3. Chattanooga class rates are governed by the Southern Classification, and Nashville class rates by the Official. A large number of articles are in the same class in both classifications; there are some articles which are classed higher under the Official Classification than under the Southern, and some that are classed higher under the Southern Classification than under the Official; but even where articles are classed higher under the Official Classification than under the Southern, they still have lower rates under the Official Classification than under the Southern, because the Southern Classification rates are so much higher per class than the Official Classification rates. For example, the class 6 rate of the Southern Classification is higher than the class 4 rate of the Official Classification.

The short all rail line from New York *via* Cincinnati to Nashville is made up of the Pennsylvania Railroad from New York to Cincinnati and the Louisville & Nashville road from Cincinnati to Nashville, and is 1058 miles in length.

The short all rail line from New York to Chattanooga is by the Pennsylvania Railroad from New York to Alexandria, the Southern Railway from Alexandria to Lynchburg, the Norfolk & Western Railway from Lynchburg to Bristol and the Southern Railway from Bristol to Chattanooga, and is 846 miles in length.

The excess of the distance by the above line *via* Cincinnati to Nashville over the above line to Chattanooga is 212 miles.

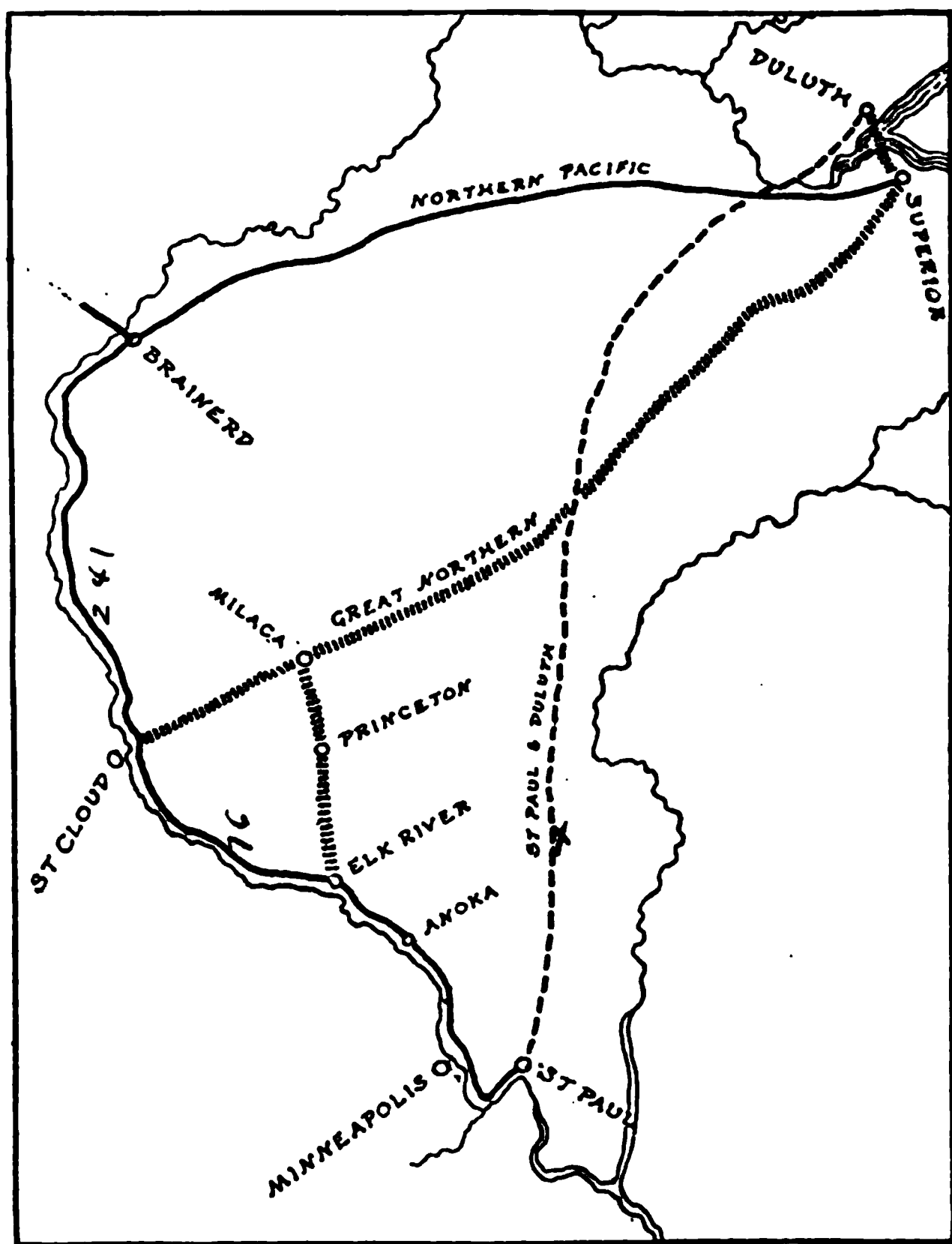
The short all rail line from New York *via* Chattanooga to Nashville is by the line above given to Chattanooga and thence over the Nashville, Chattanooga & St. Louis Railway 151 miles on to Nashville. By this line and by all lines through Chattanooga to Nashville, Nashville is the longer-distance point by 151 miles. * * * * * * *

10. The Louisville & Nashville Railroad Company owns and operates the road from Evansville to Nashville and the road from Cincinnati through Louisville to Nashville, and is part of the short through line from New York and other eastern seaboard cities *via* Cincinnati to Nashville. It also operates jointly with the Atlantic Coast Line Railroad the road from Augusta to Atlanta, Georgia, and it owns a majority of the capital stock of the Nashville, Chattanooga & St. Louis Railway Company, which latter road, having leased the Western & Atlantic extending from Atlanta to Chattanooga, operates the line all the way from Atlanta through Chattanooga to Nashville.

The Louisville & Nashville road by virtue of its ownership of a majority of the stock of the Nashville, Chattanooga & St. Louis Railway, can name the entire board of directors and has the power to control the operations of the latter road. If competition of the Nashville, Chattanooga & St. Louis Railway Company with the Louisville & Nashville Railroad Company on traffic from the east to Nashville should for any reason become objectionable to the Louisville & Nashville road, it possesses the power to control or put an end to that competition.

Chattanooga has been complaining of and protesting against these rates continuously for more than fourteen years. The foregoing facts and other testimony in the case indicate the extent and hurtfulness of the discrimination against that city; also the excessiveness of the rates to Chattanooga. The facts seem to me to be convincing that the complaint is well founded and that the rates should be condemned by an order to that effect.

passes through St. Cloud. It was conceded by the defendant that its division of the through flour rate from St. Paul yielded it about 5.375 cents per hundred pounds, as against 12 cents per hundred pounds when the transportation was from St. Cloud.



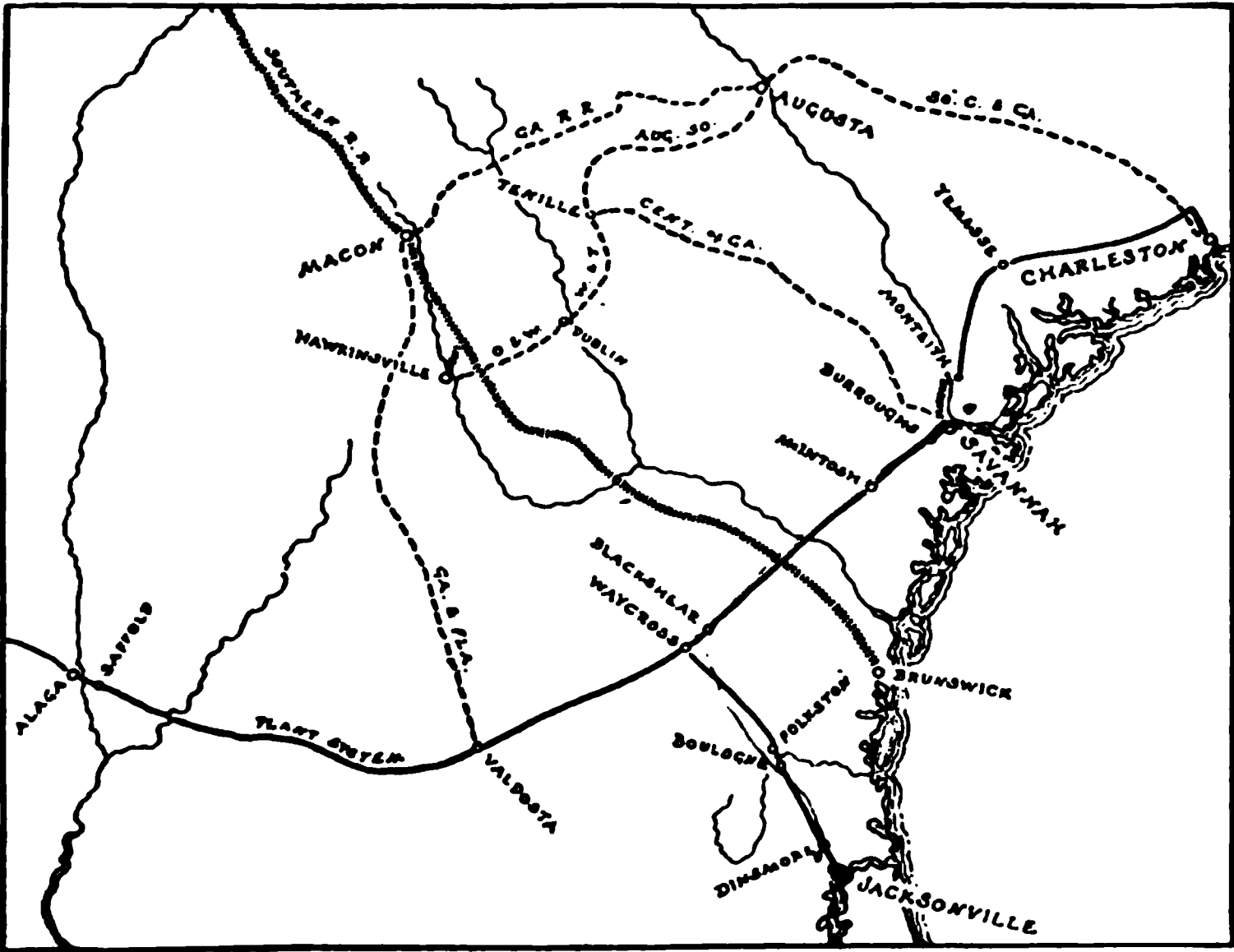
The rates on coal from Duluth to St. Cloud are, soft coal \$1.60 per ton, hard coal \$2.00 per ton; to St. Paul \$1.25 per ton for hard coal and 75 cents for soft coal. The transportation in the latter case is through St. Cloud.

There are three lines of railroad, besides that of the defendant, connecting St. Paul and Minneapolis with Duluth and

reason against our conclusion. The application of a beneficent general rule often works a certain hardship in individual cases. At the present time the rule of the fourth section is observed except in certain southern territory and in the making of trans-continental rates. The application of that section for which the defendant contends would permit throughout the whole country the making of higher rates to intermediate points, thereby disarranging business conditions and producing endless discriminations which do not now exist. We cannot feel that any such application was intended by the Act, nor that it should be permitted in due consideration of the interests of all parties concerned.

* * * * *

to the Alabama State line, where it connects with the Alabama Midland Railway extending to Montgomery. These three lines of railway are operated under a common management by what



is known as the Plant System, and constitute in practical operation but one line of railroad.

The distance between Charleston and Savannah by this line is 115 miles. Monteith, Ga., is a station upon the Charleston & Savannah Railway, 101 miles from Charleston. Burroughs, McIntosh, Blackshear and Sparks are all stations in the State of Georgia upon the Savannah, Florida & Western Railway. The rate per ton of 2000 pounds and distance from Savannah to these stations is as follows :

To	RATE	DISTANCE
Burroughs	\$0.88	12 miles
McIntosh	1.10	31 "
Blackshear	1.71	87 "
Waycross	1.82	97 "

circuitous line from Charleston demands and obtains the right to make the same rate from Charleston to Valdosta as is made from Savannah to Valdosta.

Hawkinsville, Ga., is upon the Southern Railway between Brunswick, Ga., and Macon. It is also connected by lines of railway with both Charleston and Savannah. The route from Charleston is over the South Carolina & Georgia to Augusta, the Augusta Southern to Tennille, the Wrightsville & Tennille to Dublin, and the Oconee & Western from Dublin to Hawkinsville, a distance of 297 miles. The line between Savannah and Hawkinsville is by the Central of Georgia Railway to Tennille, the Wrightsville & Tennille to Dublin, and the Oconee & Western from Dublin to Hawkinsville, being the same route from Tennille. The rate from all three points is the same, although the distances are from Brunswick 160 miles, Savannah 211 miles, and Charleston 297 miles.

The complainants have referred to several instances as showing this kind of discrimination in favor especially of Charleston and Wilmington as appears from the following tables. By "one line" is meant one continuous line operated by one company, and by "two or more lines," that the line between the points named is made up of two or more independent roads.

TO TENNILLE, GA.

FROM	DISTANCE	LINES
Savannah	134 miles	1
Charleston	221 "	2
Wilmington	354 "	3

Rate \$2.31 per ton.

TO DENMARK, S.C.

Savannah	90 miles	1
Charleston	81 "	1
Wilmington	213 "	1

Rate \$2.60 per ton.

To COLUMBUS, GA.¹

FROM	DISTANCE	LINES
Savannah	291 miles	1
Charleston	389 "	4
Wilmington	553 "	2

Rate \$3.14 per ton.

To TROY, ALA.¹

Savannah	360 miles	1
Charleston	475 "	1
Wilmington	687 "	2

Rate \$3.50 per ton.

To MONTGOMERY, ALA.¹

Savannah	340 miles	1
Charleston	527 "	1
Wilmington	611 "	2

Rate \$3.00 per ton.

The complainants say that these tables show that the rates complained of are made without any consistency, without any reference to distance, and that they uniformly discriminate against Savannah by admitting Charleston and Wilmington upon equal terms into that territory which is naturally tributary to Savannah.

The defendants do not deny that the rates are made upon the principle complained of, but they say that the principle is just, advantageous to the various localities which thereby enjoy the benefit of the competition, and that, whatever objection there may be to it, it is the only system which is possible under the peculiar circumstances which exist in this southern territory.

¹ Cf. map, p. 154, *supra*.

Valdosta. The South Carolina & Georgia Railroad, the Georgia Railroad and the Georgia Southern & Florida Railway make joint rates from Charleston to these stations as follows:

To	RATE	DISTANCE
Kathleen	\$3.32	288 miles
Sycamore	2.83	349 "
Tifton	2.53	367 "
Sparks	2.87	388 "
Valdosta	2.48	413 "

Of the above stations, Thomson, Mayfield, Haddocks, Kathleen, Sycamore and Sparks are noncompetitive stations, while Macon, Tifton and Valdosta are competitive points.

The defendants allege that the low rates at these competitive points are forced by railway competition, and that the rates to intermediate points are reasonable in and of themselves. We find that there is railway competition at the above-named competitive points, which undoubtedly *occasions* the low rates. That competition does not necessitate the low rates, except that it induces a number of carriers, all of whom are subject to the Act to Regulate Commerce, to fix them by voluntary agreement. The rates to intermediate points are not greater than those allowed by the State Railroad Commissions of Georgia and South Carolina, and in this sense they are reasonable "in and of themselves." The making of the lower rate to the more distant competitive point introduces, we think, a new element, and we are not prepared to find affirmatively that the higher intermediate rates in comparison with the lower competitive rates are reasonable either as matter of law or as matter of fact.

5. The line from Charleston to Hawkinsville is made up of the South Carolina & Georgia Railway to Augusta, the Augusta Southern from Augusta to Tennille, the Wrightsville & Tennille from Tennille to Dublin and the Oconee & Western from Dublin to Hawkinsville. The line from Savannah to Hawkinsville is composed of the Central of Georgia Railway from Savannah to Tennille, the Wrightsville & Tennille from Tennille to Dublin

Recurring now to the findings of fact, we see that in every case the rate by the longer line to the more distant point is not only controlled but absolutely fixed by competitive conditions. If the lines from Charleston to Valdosta have a right to compete at that point for traffic in commercial fertilizer, the rate which they make is determined by competition alone, and that rate is not in fact made under the same circumstances and conditions as are the rates to intermediate points, if such railway competition is to be taken into account. It is our opinion, therefore, that the higher intermediate rates involved in this case are not in violation of the fourth section.

Association, of St. Paul, and the Commercial Club of Minneapolis intervened and in substance joined with and supported the defendants. The Chicago Association of Commerce and the Merchants' Traffic Bureau and the Business Men's League of St. Louis appeared at the hearings on behalf of the commercial interests of their respective cities, offered evidence and were heard on brief and in oral argument in defense of the system of rate construction based upon the Mississippi river, and in opposition to a rate adjustment that would give the Missouri River Cities an advantage at the expense of Chicago and St. Louis.

Complainants allege that the class rates from the Atlantic seaboard, of which New York will be taken as representative, to the Missouri River Cities, to wit, in cents per 100 pounds,

1	2	3	4	5
147	120	93	68	57

are unjust and unreasonable; that they are unjustly discriminatory against the Missouri River Cities as compared with the class rates from New York to the Twin Cities, to wit, in cents per 100 pounds,

1	2	3	4	5
115	99	76	53	46

and they ask that the Commission establish from New York to the Missouri River Cities the following through class rates in cents per 100 pounds,

1	2	3	4	5
110	95.25	72.5	51.5	44

together with proportionate reductions from eastern producing points as shown in Western Trunk Line Tariff No. 786, I. C. C. No. 678, or such other rates as may be found just and reasonable.

rate being taken as 100 per cent. The rates from New York to points east of Chicago are fixed at certain percentages below the New York-Chicago rates and from New York to points beyond Chicago up to the Mississippi river crossings at certain percentages above the New York-Chicago rates.

Rates from New York to the Mississippi river crossings were fixed by the establishment of the New York-East St. Louis rate at 116 per cent of the New York-Chicago rate, and it will be seen that the mileage from New York to East St. Louis is substantially 116 per cent of the mileage from New York to Chicago. On January 1, 1908, the bridge tolls between East St. Louis and St. Louis were taken into the through rates and St. Louis, Mo., and East St. Louis, Ill., were placed upon the basis of 117 per cent of the New York-Chicago rates, which resulted in increasing the class rates 1 cent in each of the first three classes. The rates and divisions quoted herein, however, are those in effect at the time of the hearing of this case.

East St. Louis being a Mississippi river crossing, and the rates having been established at 116 per cent of the New York-Chicago rates, the rates from New York to all of the other Mississippi river crossings to and including East Dubuque, Ill., were fixed the same as to East St. Louis on traffic moving through them and to points beyond. This resulted in establishing class rates from New York to the several Mississippi river crossings, in cents per 100 pounds, as follows: (*not per cent*).

1	2	3	4	5
87	75	58	41	35

The local class rates under Western Classification applying from the several Mississippi river crossings on traffic moving through them from New York and destined to the Missouri River Cities were, in cents per 100 pounds:

1	2	3	4	5
60	45	35	27	22

In addition to the above division of the proportional rate up to the Mississippi river crossings the lines west of Chicago on business destined to the Missouri River Cities get their full class rate local giving them as earnings on this traffic for their service between Chicago and the Missouri River Cities the following, in cents per 100 pounds:

1	2	3	4	5
74.7	57.6	44.6	33.7	27.6

The through class rates from New York to the Twin Cities in cents per 100 pounds are divided as follows:

To the lines east of Chicago:

1	2	3	4	5
75	65	50	35	30

To the lines west of Chicago:

1	2	3	4	5
40	34	26	18	16

And it is thus seen that in this division the lines east of Chicago get their full New York-Chicago rates. The division going to the lines west of Chicago constitute a line of proportional rates applicable only upon through business, the local class rates between Chicago and the Twin Cities being established on a scale of 60 cents first class.

Complainants allege that the operating and transportation conditions between Chicago and the Missouri River Cities and between Chicago and the Twin Cities are not substantially different and in no sense justify the existing differences in rates.

As has been seen, the defendants allege the controlling influence of competition by water and *via* the Soo Line in the fixing of the Chicago-Twin Cities proportionals. Complainant argues

that this claim is not possessed of any merit, and in support of that argument cites the fact that these Chicago-Twin Cities rates have been increased during the season of lake navigation and reduced at a time when navigation was closed. There is much conflict in the testimony as to the effect of the competition of the Soo Line and as to when that became a factor in the situation. Complainants went to great trouble to locate the facts, but a careful inquiry into the records of the Commission show that in some respects complainants' witnesses were mistaken on this point.

The reports of the Commission disclose that in 1886 there were class rates between Chicago and the Twin Cities, in cents per 100 pounds, as follows:

1	2	3	4	5
40	30	20	15	10

These rates were in effect at the time the Chicago, Burlington & Northern Railway (now Chicago, Burlington & Quincy Railway) began its operations in that year. From that time to June 4, 1888, these rates were sometimes higher and sometimes lower than above quoted. A short time prior to the date last mentioned, the Northwestern Association, made up of all the lines between Chicago and the Twin Cities, excepting the Chicago, Burlington & Northern, increased these rates to the basis of 60 cents first class. The Chicago, Burlington & Northern assented to the 60-cent scale, but claiming an alleged violation of the agreement it said:

Finding that many of our patrons would be discriminated against by the 60-cent scale, and owing to the extremely low rates from the seaboard prevailing by Lake Superior lines, we have decided the scale,

which was:

1	2	3	4	5
40	33	26	18	12½

At the same time the same carrier established all-rail proportional class rates, applicable only upon traffic originating at or east of the western termini of the Trunk Lines, as follows:

1	2	3	4	5
31	22	23	17	11

In re C. St. P. & K. C. Ry., 2 I. C. C. Rep., 231.

The Minneapolis, St. Paul and Sault Ste. Marie Railway Company completed its line from Sault Ste. Marie to Minneapolis in January, 1888.

In July, 1889, all of the roads between Chicago and the Twin Cities established the 60-cent scale between Chicago and the Twin Cities on traffic from the Atlantic seaboard; on September 25 it was again reduced to the 40-cent scale and remained there until November, when the 60-cent scale was again restored. This remained in effect until in February, 1890, when the 40-cent scale was again adopted. It was raised to a 50-cent scale in August and to the 60-cent scale in November of the same year. This continued in force until January, 1897, when the Soo Line, against the vigorous protests of the other lines, issued a tariff which became effective in February, 1897, and which established proportional class rates from Sault Ste. Marie to the Twin Cities on all traffic originating south of Ogdensburg and east of Newport, Vt., when routed *via* the Soo Line, and on traffic originating at or east of Pittsburg when routed *via* Mackinaw City destined to Minneapolis and St. Paul in cents per 100 pounds as follows:

1	2	3	4	5
40	35	26	18	16

This line of differentials in connection with the Canadian Pacific rates to Sault Ste. Marie materially reduced the through class rates, and all of the lines between Chicago and the Twin Cities followed this reduction in May of 1897. In June, 1899, the Chicago-Twin Cities lines advanced these proportionals to a

competition. If the lines *via* the Missouri river crossings did not make the same rates to Montana and Washington points that are available *via* the Twin Cities they could get none of that business.

The class rates from Chicago to Oklahoma City moving *via* Kansas City are on a scale of \$1.50 per 100 pounds first class, of which the carriers between Chicago and Kansas City receive as their division 48 cents.

The class rates from Chicago to Texas common points applying *via* Kansas City are on a scale of \$1.57 per 100 pounds first class, of which the carriers between Chicago and Kansas City receive 47.1 cents. The class rates from Chicago through Kansas City to El Paso, Tex., are on the scale of \$1.69 per 100 pounds, first class, of which the carriers between Chicago and Kansas City receive as their division 47.1 cents. The distance from New York to the Missouri River Cities is substantially the same as from Chicago to El Paso.

On transcontinental traffic from the Atlantic seaboard to the Pacific coast terminals, carriers west of Chicago receive as their division of the class rates for the haul between Chicago and the Missouri river crossings on the first five classes, in cents per 100 pounds, the following :

1	2	3	4	5
33	28.50	24.75	22.50	19.50

From these divisions of through rates accepted by the carriers between Chicago and the Missouri river crossings and from the admission of the Chicago, Burlington and Quincy Railway Company in its answer that they give said carriers some profit, complainants argue that the rates charged from the Mississippi river crossings to the Missouri river crossings are unreasonably and unjustly high.

Defendants answer this by asserting that a low division of the through rate for a long haul is not fairly comparable with the local rate between the same points ; that the through rates are

As has been stated, the through rates from Atlantic seaboard territory to the Missouri River Cities are made by adding together the rates from points of origin to the Mississippi river crossings, using proportional rates when such are available, and the local class rates from the Mississippi river crossings to the Missouri River Cities. The through rates so established are, in our opinion, unreasonably high. This is so because those portions of the through rates which apply between the Mississippi river crossings and the Missouri River Cities are too high. These are defendants' "separately established rates" which are "applied to the through transportation," and, therefore, the through rates should be adjusted by reduction of those factors or parts thereof which are found to be unreasonable.

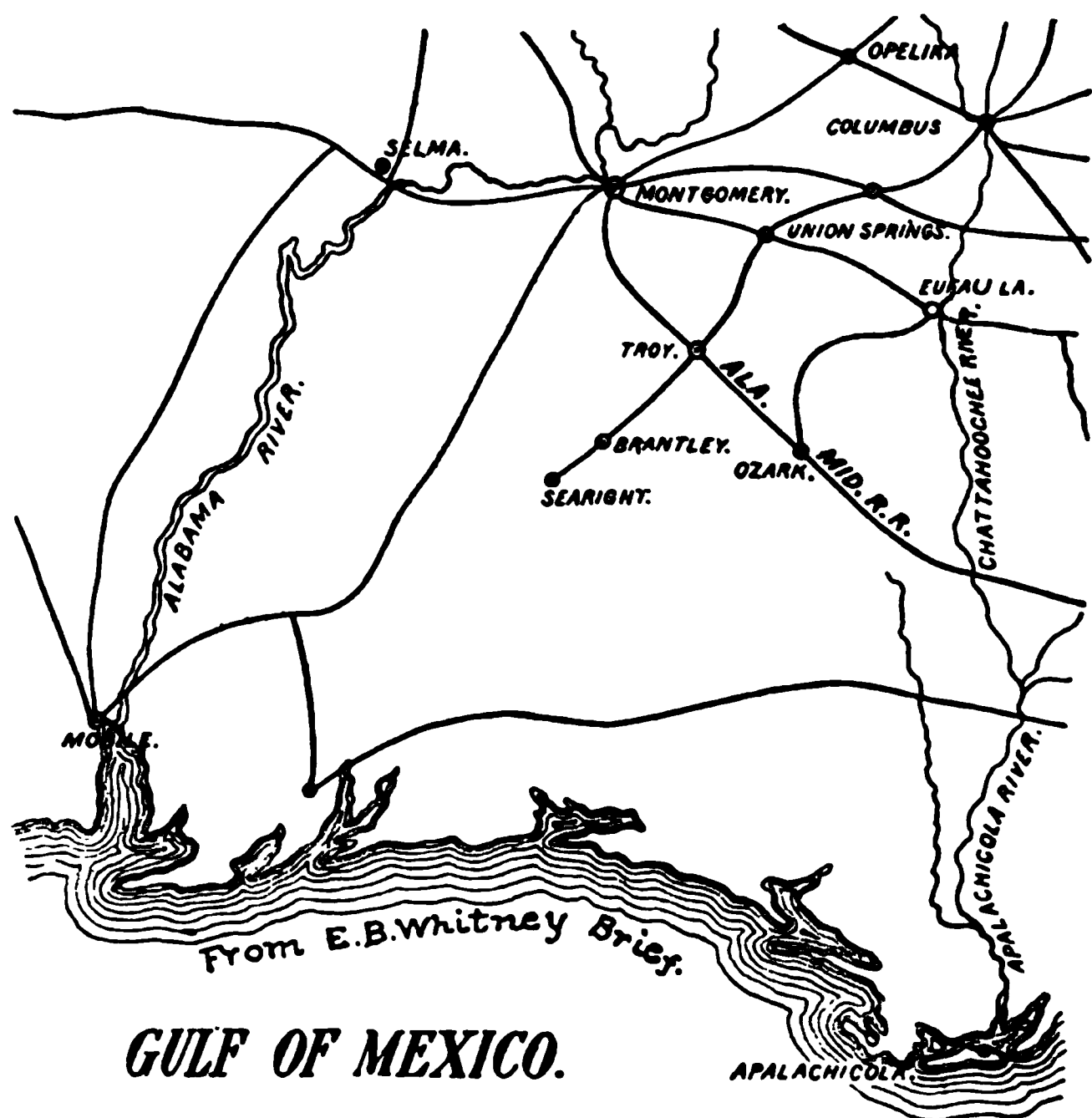
Out of consideration for long-established custom in rate construction and publication, involving different classifications, we refrain from establishing joint through rates, and, permitting the rates from Atlantic seaboard territory to the Mississippi river crossings to remain as at present, we conclude that the separately established rates of the defendants, Chicago, Rock Island & Pacific; Chicago, Burlington & Quincy; Chicago, Milwaukee & St. Paul; Chicago & Northwestern, and Chicago Great Western Railway companies, applied between the Mississippi river crossings and the Missouri River Cities to the through transportation of shipments moving under class rates and coming from the Atlantic seaboard, taking New York as representative, should be reduced to the following scale:

1	2	3	4	5
51	38	30	23	19

and that these rates should also be applied to the transportation of through shipments which move under class rates and which originated at points of origin specified on pages 3 and 4 of complainants' Exhibit A, same being the aforesaid Western Trunk Line Tariff No. 786, I. C. C. No 678, or at points taking the same rates.

These rates should also be applied on traffic from same points of origin destined to Sioux City, Iowa, when it moves through any of the Mississippi river crossings, East Burlington to East Dubuque, inclusive.

As to the other defendants, the complaint should be dismissed. An order will be entered in accordance with these views.



SEA AND RAIL

CLASS	FROM NEW YORK		FROM BALTIMORE	
	To Montgomery	To Troy	To Montgomery	To Troy
1	114	136	106	129
2	98	117	90	111
3	86	103	83	98
4	73	89	70	84
5	60	74	57	70
6	49	61	46	58
A	36	—	33	—
B	48	—	45	—
C	40	—	37	—
D	39	—	36	—
E	58	—	55	—
H	68	—	72	—
F (per bbl.) .	78	—	65	—

There are also published “all rail” rates *via* the “Great Southern Despatch” line, from New York and Baltimore to Troy and Montgomery. On this line traffic is carried from New York to Harrisburg over the Pennsylvania road, from Harrisburg to Hagerstown over the Cumberland Valley road, from Hagerstown to Bristol over the Norfolk & Western, and from Bristol to Chattanooga over the East Tennessee, Virginia & Georgia road. . . .¹

The class rates in cents per hundred pounds (except class F, which is per bbl.) over the above-described “all rail” lines to Troy and Montgomery from New York and Baltimore, are as follows :

ALL RAIL

CLASS	FROM NEW YORK		FROM BALTIMORE	
	To Montgomery	To Troy	To Montgomery	To Troy
1	114	144	106	136
2	98	123	90	115
3	86	108	83	105
4	73	93	70	90
5	60	77	57	74
6	49	63	46	60
A	36	—	33	—
B	48	—	45	—
C	40	—	37	—
D	39	—	36	—
E	58	—	55	—
H	68	—	65	—
F (per bbl.) .	78	—	72	—

It appears that shipments of phosphate rock are made *via* the Alabama Midland, as the terminal road, to Troy and through Troy to Montgomery from Charleston and Port Royal, South Carolina, and from Gainesville and other points in Florida. The roads which connect, and constitute through lines, with the

¹ These routes are mapped in the able and elaborate argument of Judge (Ed.) Baxter before the Supreme Court. U. S. Sup. Court, October term, 1896, No. 563, pp. 39 et seq. — Ed.

the former and ending at the latter and hence covers the expense to the carrier (either the Alabama Midland or the Georgia Central) at both terminals.

* * * * *

On the hauls from Montgomery to New Orleans, from Montgomery to Savannah, from Troy to Savannah and from Columbus to New Orleans, there are the expenses of both terminals as well as the haul from Troy to New Orleans. It cannot be assumed that on a haul from Troy to New Orleans the initial expenses at Troy are greater than at Montgomery on haul from that point to New Orleans or to Savannah, or at Columbus on haul from that point to New Orleans, or at Troy itself on a haul in the opposite direction to Savannah. No reason has been shown, and we can conceive of none, why a higher proportionate rate should be charged on cotton from Troy to New Orleans than from Montgomery, or from these other points on the several hauls mentioned. The disproportion, as we have seen, is attributable to the charge, as a part of the through rate to New Orleans, of the local from Troy to Montgomery, and the truth appears to be that this exaction of the local rate is an incident and in pursuance of what is termed the "trade center," or "basing," or "distributing point" system, which the Commission has more than once condemned as unjust discrimination and in violation of law, and which we will be called on to refer to more at length in connection with the class rates from Louisville, Cincinnati and St. Louis to Montgomery, Columbus and Troy, hereafter to be considered.

A rate from Troy to New Orleans based on the present mileage rate from Montgomery to that city would amount to 52.21 cts. As a general rule, however, while the aggregate through rate steadily increases as the distance increases, the rate per ton or hundredweight per mile decreases. Under this rule, the distance from Troy being 52 miles greater than from Montgomery, the rate per hundred pounds per mile from Troy, in the absence of exceptional conditions, should be slightly less than that from Montgomery. In view of this rule, and of the rate of 50 cts. from Columbus, a longer distance point by 42

is charged the full local rate from Montgomery to Troy, and the counsel for the Alabama Midland states in his brief, that "the through rate from Troy to any western market is made up by adding the local rate from Troy to Montgomery to the through rate from Montgomery to the West." From a comparison of the above local rates with the difference between the rates from Louisville and the other cities named to Montgomery and Troy, respectively, it will be found that this is true only as to rates on goods of class 6. The difference between the class 6 rate to Montgomery and that to Troy from all these points is 21 cts., which is the local rate on that class from Montgomery to Troy. On the other classes the local rate from Montgomery to Troy exceeds the proportion of the through rate between those points as follows:

	3	3	12
	2	2	7

The distance from Louisville to Montgomery over the Louisville & Nashville road is 490 miles and from Montgomery to Troy over the Alabama Midland, 52 miles. The following table shows the mileage rate on the different classes in mills per hundred pounds yielded by the through rate from Louisville to Montgomery and by the additional charge on through shipments from Louisville to Troy for the haul from Montgomery to Troy:

4	4	12	2	10
2				
14	2			

IN CENTS PER 100 POUNDS, EXCEPT CLASS F, WHICH IS PER BARREL

		12	00
	7	102	
		33	
100	00		
		24	

Brundidge, Ozark and Dothan are towns and stations on the Alabama Midland Railway, all east of Troy and shipments to them over that road from Montgomery pass through Troy. Brundidge is 17 miles from Troy and 69 from Montgomery; Ozark, 40 miles from Troy and 92 from Montgomery; and Dothan, 68 miles from Troy and 120 from Montgomery. ✓

The sum of the rates from Louisville to Columbus and Troy, respectively, plus the rates on reshipments from those cities to Brantley, in cents per 100 lbs., except class F, which is per bbl., is as follows :

	12
7	102
	33

Brantley is on the Georgia Central road 26 miles south of Troy and 111 miles from Columbus, and goods shipped from Columbus to Brantley over that road pass through Troy. A ✓

XV

THE SOUTHERN BASING POINT SYSTEM

THE DAWSON, GA., CASE¹

PROUTY, *Commissioner* :

The complainant in this case is a mercantile organization representing the commercial interests of the city of Dawson, Ga. No question is made about its competency to prosecute this proceeding. The complaint is that freight rates now in force from New York and northeastern cities, from Cincinnati, Ohio, Nashville, Tenn., Chattanooga, Tenn., and New Orleans, La., to Eufaula, Ala., and Georgetown, Americus and Albany, Ga., as compared with those to Dawson, Ga., are in violation of the third section of the Act to Regulate Commerce, in that they work an undue preference against Dawson. . . .

The class rates from the points aboved named are as follows : [Abridged. — Ed.]

RATES IN CENTS PER 100 POUNDS, EXCEPT CLASS F, WHICH IS
PER BARREL

§

§§

¹ Decided March 27, 1899. Interstate Commerce Reports, Vol. VIII, pp. 142-157. Other similar cases have been recently decided for Cordele, Ga. (*Ibid.*, Vol. VI, 848); Griffin, Ga. (*Ibid.*, Vol. VII, 225); Hampton, Fla. (*Ibid.*, Vol. VIII, 503); Wilmington, S.C. (*Ibid.*, Vol. IX, 118); and Tifton, Ga. (*Ibid.*, Vol. IX, 160).

the Plant System is 171 miles, and from Albany to Dawson by the Georgia & Alabama line 23 miles.

The short line all rail distance from New York is —

To Americus	1036 miles
To Dawson	1063 “
To Eufaula	1109 “
To Albany	1072 “

For the purposes of this inquiry Cincinnati, Nashville and Chattanooga may be treated as one group. Traffic from these points reaches the points in question through either Atlanta, Birmingham or Montgomery. The rate by all those gateways is the same and the difference in distance is not considerable. Traffic for all these points *via* the Central of Georgia Railway might come to that line at Atlanta, Birmingham or Montgomery. The Georgia & Alabama would ordinarily receive traffic for Americus, Dawson or Albany at Montgomery. The distance by that line from Montgomery is —

To Americus	141 miles
To Dawson	126 “
To Albany	162 “

Traffic from these points *via* Montgomery over this line would pass through Dawson in reaching Albany. * * *

New Orleans freight reaches the points in question over the defendant lines ordinarily through Montgomery, although it might come through points north of Montgomery, but in that event the distance would be considerably increased. The short line distance from New Orleans is —

To Eufaula	401 miles
To Dawson	447 “
To Americus	462 “
To Albany	483 “

The rates from all the points in question to Americus, Albany and Eufaula are arbitrarily made; that is, these points are regarded as base points. The rate to Dawson is said to be the lowest combination, which is understood to mean the lowest through rate which can be made by adding the local rate from

of the city of Danville, and have indicated in a general way those changes in rates which should be made. If upon an actual trial, in good faith, the effect of those changes upon the revenue of the Southern Railway should prove to be more serious than anticipated, we might modify the opinion already expressed, but there is nothing in the testimony presented upon this motion for rehearing which leads us to do so now, and the motion is denied.

An order will be made until December 31, 1900. If the Southern Railway signifies by that time its disposition to endeavor to make this readjustment, such further time will be allowed as may be reasonably necessary. Otherwise an order will then issue in the premises.

* * * * *

to think that the ordinary difference made by water between car loads and less than car loads, while not a fixed sum, is considerably less than the difference prescribed by the tariff of June 25, 1898, upon rail shipments.

The witness objected to stating the exact rates at which merchandise had been carried by his line, but did give some illustrative examples; among others the following, in connection with which the rail rate is also given:

	WATER RATE	RAIL RATE	
		L. C. L.	C. L.
Bar iron	30 to 35¢	\$1.25	\$.75
Grindstones	32½¢	1.90	.75
Soil pipe	35 to 40¢	1.90	.75
Radiators	40 to 45¢	2.20	1.30
Hardwood lumber . . .	40 to 42¢	1.25	.75

It must be remembered that a water rate of a certain number of cents per hundred pounds is by no means equivalent in value to the shipper to a rail rate of the same amount. Several things must be taken into account in determining the relative desirability of the two rates. The item of marine insurance is important, and Mr. Jackson stated that this was by his sailing vessels about 1½ per cent of the value of the commodity; the time occupied in transit and the consequent loss upon the investment is an item of consequence, the ordinary run from San Francisco being in the vicinity of 135 days. In addition to this is the liability to damage by salt water in case of many articles as well as the delay and uncertainty incident upon that means of transportation. No witness was prepared to state what rate by ocean was equivalent to a rate of \$1 by rail; indeed the witnesses seemed to agree that it would be impossible to answer that question definitely since its answer must depend upon the commodity transported. One witness said that after everything had been taken into account he would still pay the railways on most commodities rate 5 per cent higher than that by water.

his rate to the nearer station ought to be no higher than to the more distant point. * * * * * *

The complaint also attacks the scheme of transcontinental rate making in force east of the Missouri river as applied to west-bound rates. That system differs radically from the method followed upon the Pacific Coast. While upon the Pacific Coast the rate is lowest to the terminal at the ocean and increases toward the interior, in the east the rate from the seaboard does not increase as we proceed inland, but remains the same. This produces what is known as the blanket system of rates. The first-class rate from New York to San Francisco is \$3 and the same rate applies from St. Louis. Commodity rates follow the same rule so that generally speaking rates both class and commodity to Pacific Coast terminals and points basing upon such terminals are the same from all points east of the Missouri river. This St. Louis declares to be unjust; being one thousand miles nearer San Francisco than New York it insists that it should be given the benefit of that advantage in distance.

The higher rate to the interior point in California is justified by the carriers upon the ground of water competition, the theory being this: Water competition between New York and San Francisco establishes a cheaper rate than could reasonably be exacted from the rail carrier. Merchandise at New York can be taken by water to San Francisco at the low water rate and thence carried by rail to an interior point for the water rate from New York to San Francisco plus the local rate from San Francisco to the interior point. If the rail carrier engages in this business it must meet the rate thus established by water at San Francisco, and by water and rail at the interior point. It is claimed that the carrier may at his election meet this competition and make its rates accordingly. It may therefore charge to the interior point a rate higher than the terminal rate by the local back, until a point is reached at which the rate so fixed is more than a reasonable rate. This right upon the part of the carrier may perhaps be subject to certain qualifications and limitations, but generally speaking this is the theory upon which certain rates upon the Pacific Coast, which have

Still more important is the situation of the carriers themselves. Those lines which distribute upon the Pacific Coast control the adjustment of rates into that section, and their interests are united to maintain the present system. Indeed it is declared that to reduce intermediate rates to a level with terminal rates would bankrupt these lines, and it certainly would have a most serious effect upon their revenues. In the east we find many important systems beginning at the Missouri river or in the middle west. It is for the interest of these systems that traffic should originate at the eastern termini of their respective lines. Not only do they obtain more for the transportation of traffic so originating than they obtain from their division upon traffic originating farther east, but they also build up the industries of that locality and therefore remove these from the sphere of water competition. Moreover the traffic which the eastern connections of the transcontinental lines carry farther east is insignificant in amount and in revenue returned in comparison with the whole amount of their traffic. From these various causes it has transpired that the low rate which water competition establishes from New York has been extended to all points east of the Missouri river.

The Commission in a very recent case has examined and passed upon this same question. *Kindel et al. v. Atchison, Topeka & Santa Fé Railway Co. et al.*, 8 I. C. C. Rep. 608.

In that case the city of Denver alleged that by virtue of its location it was entitled to a lower rate to Pacific Coast terminals than the rate from points on the Missouri river and east. When the complaint was brought most rates were higher from Denver than from the Missouri river. The only fact upon which Denver based that claim was its location; being one thousand miles nearer San Francisco than Chicago, and nearly two thousand miles nearer San Francisco than New York, it insisted that it was entitled to a better rate. The Commission held that this did not necessarily follow; that while Denver was nearer in geographical miles it was not of necessity nearer in transportation units. The actual cost of transporting merchandise from New York to San Francisco by water was probably

reduction is to take place it should be in the high and discriminating intermediate rate rather than in the already extremely low terminal charge. Competition is not healthy when it becomes destructive to the competing parties. It was said upon the argument that this present adjustment provided a state of "equilibrium" under which both the rail and the water, the east and the west could fairly compete. So far as the testimony shows we are inclined to think that this is true of competition by water.

It is said that this tariff is unlawful because it excludes the jobber of the middle west from this territory, gives to the wholesaler upon the Pacific Coast a monopoly, restricts the market in which the retailer can buy and thereby enhances the price to the consumer. The territory of the Pacific Coast jobber is extremely limited, and he is inclined to insist that he should be left in the peaceable possession of that territory; that the jobber of the middle west whose territory extends a thousand miles to the east and seventeen hundred miles to the west ought not to covet the narrow strip which lies beyond the 115th meridian. We do not accede altogether to this view. The adjustment of rates upon the Pacific Coast is such that it confines the local jobber to certain spheres making them almost omnipotent within those spheres; and for this reason competition from the east, which under this same adjustment of rates, tends to diffuse itself over the whole coast, is important. If there be no controlling reason to the contrary, rates should be so adjusted as to permit the operation of the wholesaler from the middle west throughout all this territory. * * * *

Viewing the case in this broad sense we find that these differentials are not abnormal when compared with others in different parts of this country at the present time; that they are not greater than those in effect under the west-bound transcontinental tariff of 1893, and not greatly disproportionate to the actual difference in cost of service. Considering them with respect to their bearing upon the parties immediately interested, namely, the carriers and the two classes of jobbers, we find that they conserve the interests of the carrier, that they give to the

which it is divided. These groups are lettered from A to J. A is limited to New York City piers, and has to do only with shipments by steamship *via* Gulf ports; B covers New England territory; C, New York territory and the middle states, with New York City as the principal point; D, Chicago and adjacent territory; E, the Mississippi river, with St. Louis as the principal city; F, the Missouri river; G, Kansas; H, Oklahoma; I, Texas; and J, Colorado, with Denver as its central point.

Class rates. Coming, then, to the construction of the Nevada class rates, we find that the carriers have employed three methods of construction during the past two years. Prior to January 1, 1909, there existed a body of what were known as intermediate class rates to Reno from certain designated eastern points. These rates were, on first class —

From Chicago-Milwaukee common points	\$3.90
From Mississippi river common points	3.70
From Missouri river common points	3.50
From Colorado common points	3.00

An alternative clause gave Reno the right to the combination rate based on Sacramento whenever that should be lower. This indefinite method of stating rates the Commission condemned in a general ruling. The tariffs were then changed so as to cancel the alternative clause and the intermediate class rates and thus to make all Nevada rates base on Sacramento. This was the situation when the case was heard. Later, however, in June of last year, a third plan was adopted, and that now obtains, viz., to divide Nevada into two zones with Humboldt as the dividing point. Points west of Humboldt take the Sacramento combination. Points east of Humboldt take generally the Ogden combination. It is unnecessary herein to trace the history and the effect of these various changes in the method of rate basing. We shall deal with the rates to all Nevada points as joint rates. And inasmuch as rates on all ten classes were quoted by the carriers' tariffs from all eastern defined territory to coast terminals and therefore by combination to interior points, at the time when this proceeding was brought, we shall consider that our jurisdiction extends to the installation of such rates to all of such territory.

An examination of present tariffs will show that from New England and New York territories (Groups B and C) no class rates below fourth class are now extended. Prior to January 1, 1909, however, and at the time this complaint was brought, rates were given for the full 10 classes from these groups, and such rates upon the \$3 scale are now given to coast terminals from Group A, the freight being carried from the New York City piers to New Orleans and Galveston by ocean carriers and thence by rail. It will also be seen that from Group J slightly lower rates are made on all classes below second class than are made from other groups. With these exceptions, however, the rates are uniform throughout the whole eastern defined territory as to classified freight.

The local rates on classes from Sacramento to Reno are as follows:

Class	1	2	3	4	5	A	B	C	D	E
Rate	129	112	102	87	78	78	24	23.5	25.5	25.5

The result of the combination on Sacramento is therefore to produce the following rates to Reno:

From Groups B, C, D, E, F, G, H, and I:

Class	1	2	3	4	5	A	B	C	D	E
Rate	429	373	322	277	243	238	159	133½	125½	120½

From Group J:

Class	1	2	3	4	5	A	B	C	D	E
Rate	429	373	302	262	238	218	154	128½	110½	105½

Rates to points east of Humboldt, such as Winnemucca and Elko, under the present method of making rates on the Ogden combination, vary as the rate from point of origin to Ogden.

state commission. In support of its case the Southern Pacific Company filed an affidavit made by Mr. C. B. Seger, auditor of the Southern Pacific Company, showing the earnings of the Central Pacific on business wholly within the state, on business passing through the state, on business originating in and passing out of the state, and on business originating outside and having its destination in the state, for the fiscal year ending June 30, 1907. Mr. Seger said by way of explaining his figures :

The freight earnings accruing to and made by said Southern Pacific Company in Nevada, being the revenue itself, without reference to its disposition under any lease, agreement, or otherwise, are derived for the said fiscal year 1907 from through and local business, understanding by local business such as is strictly intrastate in character, picked up and laid down within the limits of the State of Nevada, and understanding by through business such as is interstate in character. Further differentiating, said interstate business consists, first, of business originating outside and coming into the state ; second, of business originating in and passing out of the state ; and, third, of business originating outside the state, having destination beyond the state, and, in relation to the state itself, simply passing through the state. The freight earnings for said fiscal year, and pertaining to the said business as above classified, are set forth under the appropriate heads, and are, in fact, as follows :

	REVENUE	PERCENT- AGE OF TOTAL
Intrastate	\$159,791.40	0.02
Originating outside and coming into the state . .	1,683,687.69	.20
Originating in and passing out of the state . . .	831,802.96	.10
	2,675,282.05	.32
Passing through the state	5,578,282.28	.68
Sum total	\$8,253,564.33	1.00

Surprising as these figures are they apparently do not fully set forth the extent of Nevada business at this time, as is shown by an exhibit filed by the Southern Pacific Company in the present case, giving the business west of Ogden for the single month of February, 1909, which may be epitomized thus :

	REVENUE	PERCENT- AGE OF TOTAL	TONNAGE	PERCENT- AGE OF TOTAL
Intrastate	\$29,001.00	0.03	4,715	0.04
Into and out of Nevada and Utah west of Ogden	314,379.65	.38	64,367	.50
	343,380.65	.41	69,182	.54
Passing through the state	495,128.37	.59	60,271	.46
Total for month of February, 1909	\$838,509.02	1.00	130,453	1.00

Another most interesting showing is made by the Seger affidavit as to passenger business on the Southern Pacific in the State of Nevada for the year 1907, the figures given being these :

	REVENUE	PERCENT- AGE
Intrastate	\$286,235.65	10
Originating outside and coming into the state	857,511.55	18
Originating in and passing out of the state	267,582.85	9
		— 22
		— 32
Passing through the state	1,962,915.33	68
Sum total	\$2,874,245.38	100

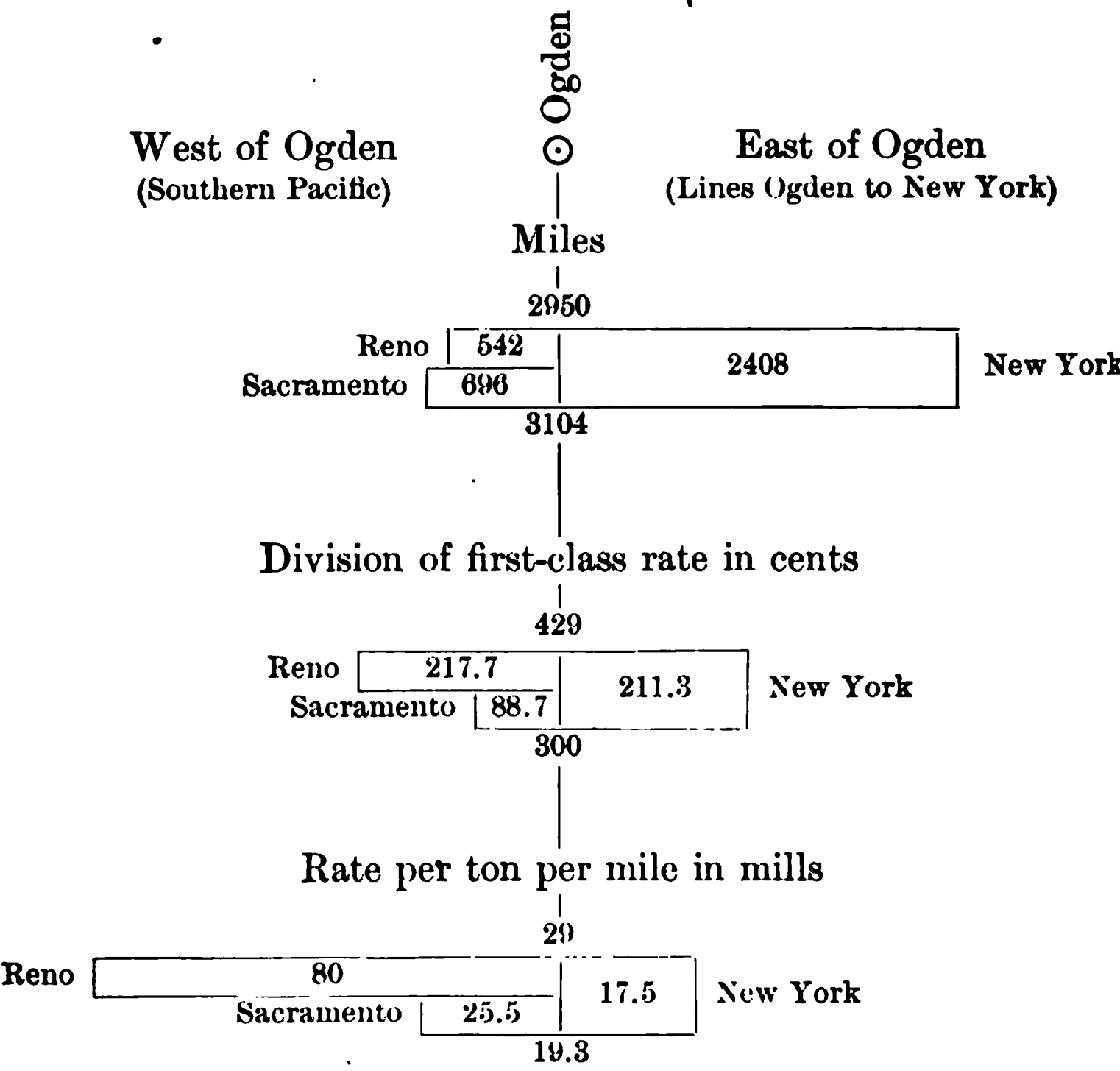
The statement for the month of February, 1909, referred to above, sets forth very clearly not only the volume of business going into and out of Nevada and the earnings of the Southern Pacific thereon, but also gives a specific analysis of the sources of the traffic, showing the volume which comes into Nevada from the east and that which comes from California. Under "Question 2" below will be found a statement of the freight received at Nevada and Utah points from points west of Calvada, which is a station directly on the California-Nevada state line. This table, however, should not mislead; a considerable percentage of the traffic from California is traffic of eastern origin reshipped from California to Nevada. The table also includes coal and other commodities of very large tonnage (approximately one-half of the total in weight) coming from points west of eastern defined territory.

carriers east of Ogden receive precisely the same earnings upon both shipments; but the Southern Pacific, west of Ogden, receives far more upon the Reno shipment than on the Sacramento shipment. This is illustrated in the following table:

FROM —	TO —	RATE	EARNINGS EAST OF OGDEN	EARNINGS OF SOUTHERN PACIFIC COMPANY (WEST OF OGDEN)
		Cents	Cents	Cents
Group B, Boston	{ Sacramento	300	211.3	88.7
	{ Reno . . .	429	211.3	217.7
Group C, New York	{ Sacramento	300	211.3	88.7
	{ Reno . . .	429	211.3	217.7
Group D, including Chicago, etc. . . .	{ Sacramento	300	181.9	118.1
	{ Reno . . .	429	181.0	248.0
Group E, including Mississippi river .	{ Sacramento	300	174.5	125.5
	{ Reno . . .	429	174.5	254.5
Group F, including Missouri river . .	{ Sacramento	300	159.3	140.7
	{ Reno . . .	429	159.3	269.7

Neither at the hearings nor in the argument did the carriers east of Ogden contend that their divisions of these rates were unreasonable. The Southern Pacific, however, the carrier which makes the last 700 miles of a 3100-mile haul, strenuously insists that its rates to the more distant points are compelled by water competition for the purpose of defending higher rates to intermediate points; while the carriers performing 2400 miles of that service appear to regard the rate as entirely reasonable. The line from New York to Sacramento and Reno constitutes a through route and in law the carriers engaging therein constitute one line. If the Sacramento rate is less than a reasonable rate and the result of competition then it would seem fair to assume that all of the carriers engaging in the transportation so consider it and would accordingly demand a lesser division than the division they would be justified in requiring out of the higher rate to the intermediate point. The fact remains, however, that for the 2400-mile haul from New York to Ogden the New York Central, the Lake Shore, the North Western, and the Union Pacific secure the same revenue out of the \$3 rate to Sacramento that

they do out of the \$4.29 rate to Reno. This is graphically illustrated by the following diagram showing the division of the rate:



PRODUCTIVE FREIGHT TERRITORY

We have gone extensively into an investigation of the conditions surrounding this traffic and in anywise governing the basis upon which the rates to Nevada from the east should be governed. What has been said herein gives little more than a suggestion of the extent of the inquiry which has been made. We have, for instance, had reports made upon the financial condition of the carriers involved, and their ability to meet any reduction which the Commission might direct without serious impairment of their revenues, an interesting fact in this connection being this: During

carriers to make a record of all shipments into Nevada from eastern defined territory during the months of July, August, and September, 1910, or during such other representative months as may be determined upon by the Commission after conference with the carriers, and furnish the Commission with a statement showing as to each shipment the following facts:

(1) The commodity; (2) the weight, carload or less than carload; (3) point of origin and the transcontinental territorial group in which the same is situated; (4) rate that would be applied under the tariffs in effect July 1, 1910; (5) the gross charges thereunder; (6) the rate applicable under the order made in this case; (7) the gross charges thereunder; (8) the rate that would be applied were the movement to Sacramento; (9) the gross charges thereunder.

The complainant will be ordered in this case, on or before October 1, 1910, to furnish to the Commission and to the defendant Southern Pacific Company a list of commodities upon which commodity rates are desired, together with an outline of the various territories or groups from which commodity rates should apply.

We are of the opinion that justice can not be done to Nevada unless Nevada points are put on a practical parity with points in eastern Washington and eastern Oregon, and a further hearing will, in due course, be held after the data here requested have been furnished by carriers and complainant.

XVIII

EXPORT AND DOMESTIC GRAIN RATES

ATLANTIC AND GULF COMPETITION¹

PROUTY, *Commissioner* :

The purpose of this proceeding was the investigation of export rates upon grain and grain products. . . . The matters embraced were :

First. Relative domestic and export rates.

Second. Relative rates on grain and grain products for export.

Third. Publication of export tariffs upon grain and grain products.²

I

A domestic rate applies to traffic which is being transported for use in this country ; an export rate to traffic which is on its way to some foreign country. * * * *

An examination of the tariffs filed with the Commission since 1887 shows that until recently the published rates upon domestic and export traffic have ordinarily been the same. Taking Chicago as an example, no export rate appears until October 1, 1896. Upon that date, the domestic rate on corn being 20 cents to New York, an export rate of 15 cents was made which expired October 31, 1896. January 20, 1897, the domestic rate still being 20 cents, a 15-cent export rate was again put in and remained effective until September 6, 1897. No other export rate appears until February 1, 1899, when an export rate of 18½ cents upon wheat and 16 cents upon corn was published, the domestic rates being 20 cents and 17½ cents, respectively. April 17th this rate was reduced to 12 cents upon both wheat

¹ Decided August 7, 1899. Interstate Commerce Reports, Vol. VIII, pp. 214-276. The English practice is suggestively described at p. 754, *infra*. At p. 404 of Ripley's Railroads: Rates and Regulation the larger aspects of both import and export rates are discussed.

² This part of the case is omitted. — ED.

Lakes, the St. Lawrence river and the Canadian canals to the side of the ocean steamship at Montreal. Grain carried by lake from Chicago to Buffalo can there be loaded into a canal boat and taken through the Erie canal and the Hudson river to the ship side in New York harbor. It did not appear very definitely what the rate per hundred pounds by water from Chicago to Montreal was, but the testimony leaves the impression that it is between 8 and 9 cents per hundred pounds. Neither did it appear exactly what the all water rate was from Chicago to New York. . . .

We have already seen that export corn, being at Chicago, and export wheat, being at Duluth, will reach the foreign port by the cheapest route. Unless, therefore, the rail carrier makes substantially the same route on this grain to New York as is made by water lines the traffic will of necessity move by water, and not by rail. Otherwise stated, no grain can be exported from Chicago through New York by rail unless the rail rate is practically the same as the water rate. There may be circumstances under which the rail carrier can obtain a slightly higher rate, but the testimony shows, and the necessary conclusion from the undisputed facts is, that no considerable difference can be made in favor of rail transportation.

There was no testimony to show what the ocean rate from Montreal to the foreign destination was, but it did appear in this case, and has appeared in several previous cases, that the ocean rate from New York is lower than from any other port except Boston. It must follow, therefore, that all grain at Chicago, or which can be brought to Chicago, will be exported through the port of New York unless carriers leading from Chicago to the other ports make a rate as low or indeed lower than is made to New York. The same remark applies to interior points. Peoria, St. Louis and the lines leading from these cities claim the right to participate in this export grain traffic, but this they cannot do unless the rates from such interior points to the port of export bear a certain relation to the Chicago rate, for the grain can reach either Chicago or these points. A reduction in the Chicago export rate necessarily forces a reduction in the

would be worth exactly as much at the Mississippi as it is at Chicago for export. The testimony tended to show that the putting in of this low proportional rate did actually increase the price of grain at the Mississippi river in comparison with the Chicago price. * * * * *

It may happen and in many cases does happen, that, by the application of these so-called proportional rates, grain from the more distant point obtains transportation to Chicago or to the Gulf at a less rate than grain from the intermediate fields through which the transportation passes. We held in the investigation as to these export rates last April that this created, as against such intermediate points, an undue preference. *In the Matter of Export Rates from Points East and West of the Mississippi River*, 8 I. C. C. Rep. 185. We now repeat that finding.

* * * * *

The carriers insist that while now, for the first time, a systematic difference is made in the published tariff between export and domestic rates, there has in fact always been such a difference in the actual rate. It is undoubtedly true that as to competitive traffic the published rate has been largely departed from in the past. This export traffic is highly competitive. It moves in large lots and is handled by comparatively few individuals. The idea has been more or less prevalent that the provisions of the Act to Regulate Commerce did not refer to export traffic. For these and other reasons export business has been peculiarly open to the manipulation of rates.

The testimony of representatives of carriers familiar with rates actually paid was to the effect that there had been in the past as wide a difference between the published rate and the actual rate upon export business as exists to-day in the published tariffs. We have no doubt that there has been in the past a difference between the published and actual rates. This difference has existed in the case of both export and domestic traffic. It has probably been greater in the case of export business, but how great we cannot definitely find.

Carriers also claim that they are justified in making a lower rate on export than on domestic business by the fact that the

Now if an order were to be made that domestic and export rates should under all circumstances be the same, it might result, and probably would result, in either driving out of business those lines where two rates may with propriety exist, or at all events in unjustly depleting the revenues of those lines. It would give to those lines in whose tariffs the difference is least an undue advantage over other lines in this competitive struggle. Before making any order which would not work injustice in the premises, it would be necessary to determine in each case by how much the domestic rate might properly exceed the export rate, if at all, and compel the observance of this relation. To do this would require us to determine what the differentials between these ports should be, and what reasonable domestic rates to these ports should be, and we certainly cannot undertake to do this upon the testimony before us.

The second circumstance which deters us from attempting to interfere is the existence of water competition. These rates were made before the opening of navigation, and were not probably influenced by that element; but we must dispose of the case with some reference to conditions as they now exist, and water competition is at the present time a factor which cannot be ignored.

By referring to the findings of fact it will be seen that Chicago and Duluth are the two points through which the greatest quantity of wheat and corn passes on its way to the seaboard. From both these points communication with the seaboard can be had by water. The greater part of the grain which leaves these cities for the east moves by water, and it cannot be questioned that the water rate to New York determines the rail or the water and rail rate to that same point. This Commission has always held that water competition, if it in fact exists, is an important circumstance in determining what rates may be justly charged by the rail carrier. The reasons for that have often been stated, and need not be repeated here. The water carrier is not subject to the provisions of the Act to Regulate Commerce; it publishes no rates; it may change its rates from day to day or from hour to hour; it can carry certain commodities at a lower rate probably than can be profitably made by rail. We have therefore been inclined to hold that competition

fix these relative rates on wheat and flour, and we think the carriers are justified by that competition in making, to a degree at least, the same difference which is thereby created. The millers urge with force that the rail carriers, by virtue of their control over the line boats by which alone flour is transported, unduly exaggerate the difference in rate between wheat and flour; but the fact still remains that water competition does create a substantial difference in those rates.

We have also found that to a limited extent the cost of service is greater in the transportation of export flour than in that of export wheat, and for this reason under the circumstances of this case we think that a slightly higher rate on flour than on wheat for export is justifiable. This is especially true in view of the fact that the flour rate includes the delivery on shipboard while the wheat rate does not. The rate from Chicago to New York upon flour puts the flour on board the vessel, whereas to put export wheat on shipboard an additional charge of about $1\frac{1}{8}$ cents per bushel is made. * * * *

It should perhaps be noticed that, although the rate upon flour has been confessedly higher than upon wheat for many years, the exportation of flour has steadily increased, being 3,947,333 barrels in 1878 and 15,349,943 barrels in 1898. The increase for the last six years has not, however, been marked, and exportations since 1894 have actually declined, having been in that year 16,859,533 barrels.

This Commission is of the opinion that public policy and good railway policy alike require the same rate upon export wheat and flour. Such rates tend to develop both the industries of the United States and the traffic of the railways. We are not, however, here settling national or railroad policy. We are simply administering the Act to Regulate Commerce; and in view of all conditions as we find them, we do not feel that charging a somewhat higher rate on flour than on wheat for export is in violation of that statute. We do think that the published difference is too wide, and that the rate upon flour for export ought not to exceed ~~that upon~~ wheat by more than 2 cents per hundred pounds. * * * *

XIX

FREIGHT CLASSIFICATION

THE HATTERS' FURS CASE¹

PROUTY, *Commissioner*:

The complainant is engaged in the manufacture of hats under the title of the Pioneer Hat Works at Wabash, Indiana, and his complaint is that "hatters' furs" and "fur scraps and cuttings" are wrongly classified, the present classification of both these commodities being double first class, while he insists that hatters' furs should be classified as first class and fur scraps and cuttings as second class. . . .

Hatters' furs is a trade name applicable to the various kinds of fur used in the manufacture of hats. These furs, as sold to the manufacturer and presented for transportation, are sheared from the skin, and packed in paper bags containing three or five pounds each, which are then assembled in wooden cases, 100 bags to the case. The case thus weighs from three to five hundred pounds and is in size about 36" x 36" x 40", containing some 30 cu. ft. * * * * * *

The complainant testified that rabbit fur was the sort mostly used by him in the manufacture of hats, although he used to some extent nutria, and that the value of the furs which he used was from \$.40 to \$2.50 per pound. The complainant makes a medium grade of fur hats. More of the higher priced furs would probably enter into the manufacture of hats of a higher grade. These furs, nutria and beaver, average in price as high as \$6 per pound, and the price list show that the best grade of beaver has at times listed at \$15 per pound; but it is fairly

¹ Decided November 21, 1901. Interstate Commerce Reports, Vol. IX, pp. 79-86.

The market of the complainant is the whole United States west of Pittsburg and in all that territory he competes with the eastern manufacturer. The exact points in the East at which these competitors are located did not appear, and it is not therefore possible to make any exact comparison of rates; but generally speaking the rate from these eastern points is that of Boston or New York. There is considerable territory, like the Pacific Coast, to which rates upon hats are the same from the Atlantic seaboard as from Wabash, and in nearly all territory the sum of the rates, upon the same class, from New York to Wabash and from Wabash to the point of consumption is considerably greater than the rate from New York to the last-named destination.

Some question was raised as to the amount of complainant's shipments per year. Mr. Gill, Chairman of the Official Classification Committee, stated that a compilation of these shipments had been made and that they aggregated about 150,000 pounds per year. The rate from New York to Wabash is 72 cents, first class, and \$1.44 double first class. If, therefore, the complainant is right in his contention as to what the correct classification should be he is damaged to the extent of something more than \$1000 annually upon the statement of the defendants.

The complainant also urged that the classification in question created undue prejudice against his commodities as compared with dry goods, boots and shoes and many other articles classified as first class.

About 250 articles are classified as double first class by the Official Classification. Generally speaking, such articles offer some special reason for the classification, like unusual bulk, extraordinary risk, or something of that nature. An examination of the entire list fails to disclose a single commodity which affords as desirable traffic as the one under consideration, and in only three or four instances is there any approach to this. Something like 1500 articles are classified as first class. We have examined this list and our conclusion is that but very few of them are as desirable freight as hatters' furs and fur scraps and cuttings, and that none of them are more so.

exercised and the same principle must apply to the relation between two commodities. In that case it was said that the authority was not clear, but having exercised it then, and believing that a plain distinction exists between fixing a rate and determining a relation in rates, we shall continue to do so until the Supreme Court of the United States has held otherwise.

* * * * *

centers which compete for that traffic; and is usually circumscribed, either wholly or in part, by imaginary boundaries fixed without regard to factors which exercise controlling influence upon the trend of traffic and of rates. The influence of lakes, of rivers and canals, the competition of rival markets, the relation between manufacturer and dealer, and other like forces that, in the making of rates, confront the traffic officer of an interstate railroad and the Interstate Commerce Commission itself, enter but slightly, if at all, into the calculations of the state. In every case, in the exercise of its rate-making power, distance is the one factor given serious consideration; and the result of its labors is invariably the production of a distance tariff.

This state distance tariff, is, on its face, a simple and a harmless thing. The right of the state to make it and to change it at its will seems to be amply buttressed by the conceded principle of law that the power of Congress over interstate commerce leaves untouched the power of the states to regulate their purely internal commerce. And no simpler or less obnoxious method of exercising that power would seem possible than to prescribe the rates at which traffic shall move from point to point within the state.

But when the traffic officer of an interstate railroad comes to apply this state distance tariff, made for state use on purely local considerations, to the traffic that actually moves over his rails, he finds that he cannot confine its influence to traffic within the state, and that, against his will and without his action, it readjusts his rates into and out of and through the state, and determines his revenue on traffic that never traverses the borders of the state. This is illustrated by the action of the following states:

MISSOURI AND IOWA

Missouri has a far-reaching control over interstate rates by reason of the situation of the state at the point of least distance between the Mississippi river—the basing line for rates from the East—and the Missouri river, the base line for rates to the West.

(b) The local *Iowa* rate from points on the Mississippi river to points on the Missouri river (say Clinton to Council Bluffs, 350 miles) is reduced from 60 cents to 40 cents ;

(c) The *interstate* rate from points on the Mississippi river in Missouri to points on the Missouri river in Iowa or Nebraska (say St. Louis to Council Bluffs or Omaha) is reduced ;

(d) The *interstate* rate from points on the Missouri river in Missouri to points on the Mississippi river in Iowa (say Kansas City to Davenport) is reduced.

Not only this, but this Missouri commission rate for 200 miles fixes the maximum rate which the Missouri Pacific Railway may charge for its haul of 488 miles between St. Louis and Omaha, through Missouri, Kansas, and Nebraska ; and in like manner the rate of the Illinois Central Railroad for its haul of 703 miles between the same points, through the States of Missouri, Illinois, and Iowa. See the map [p. 538].

Thus, within the territory inclosed by the Illinois Central, Missouri Pacific, and Rock Island as outlined on the map, any reduction made by the Missouri commission in the class rates for the 200-mile distance between Hannibal, Missouri, and Kansas City, Missouri, has the effect of bringing all rates to the level so fixed, not only between the crossings themselves but, with very slight exceptions, between all intermediate points.

This, again, is but a preliminary glimpse at the inevitable results of this action of the Missouri State Commission.

The first-class rate from Chicago to the Missouri river has for many years been 20 cents per 100 pounds higher than the rate from the Mississippi river. The competitive adjustment would require that there be no greater difference under the new scale. Indeed, the rates from the seaboard to Chicago and the Mississippi river remaining as at present, it is doubtful if Chicago and the routes through Chicago could compete should the present arbitrary difference be maintained under the reduced adjustment. The present rate of 80 cents, first class, from Chicago, is one-third higher than the rate from the Mississippi to the Missouri river. It is probable that not more than one-third greater would



1. The first part of the paper is devoted to the study of the asymptotic behavior of the solutions of the system (1) as $t \rightarrow \infty$. It is shown that the solutions of the system (1) tend to zero as $t \rightarrow \infty$ if and only if the matrix A is stable.

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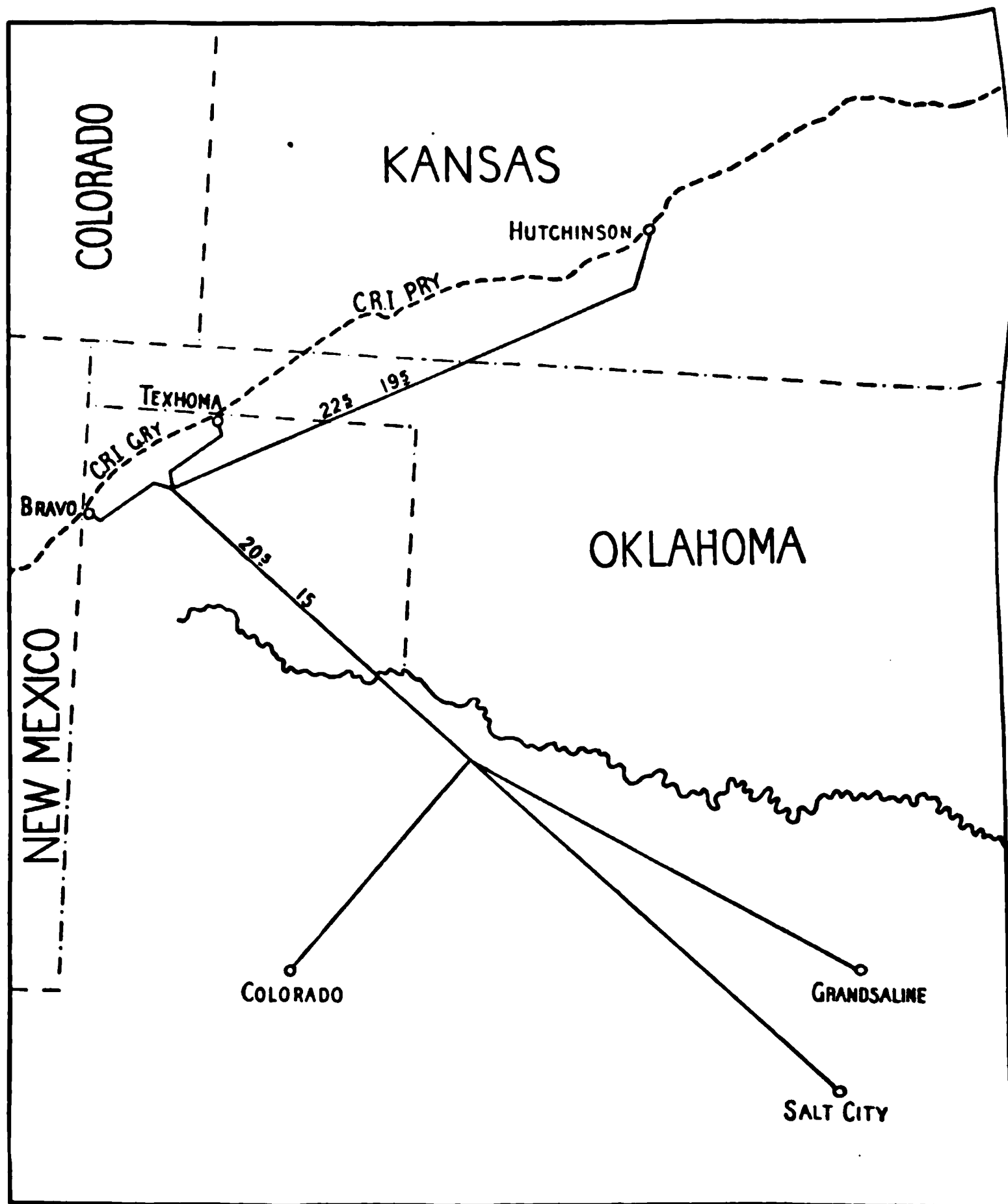
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1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 26

City and Colorado, Texas, and under the State Commission's orders, the Rock Island, in connection with other lines, had in effect an average rate of $20\frac{1}{2}$ cents per 100 pounds from these



state salt plants to the Panhandle towns. The average haul to these points is from Grand Saline, 525 miles ; from Colorado, 660; and Salt City, Texas, 690 miles. When the Rock Island's interstate rate came to the attention of the Texas Commission, it

And as to this argument, urged before the Supreme Court in the Minnesota rate case, recently decided, the opinion of Mr. Justice Peckham says:

Still another Federal question is urged growing out of the assertion that the laws are, by their necessary effect, an interference with and a regulation of interstate commerce, the grounds for which assertion it is not now necessary to enlarge upon. The question is not, at any rate, frivolous.

Central Pacific link to the coast still in the hands of the Southern Pacific. But this feature, held by the outgoing administration as essential, was not emphasized by the new Democratic Attorney-General ; and as for the Union Pacific, it was deemed that a traffic alliance with the Central Pacific providing for a through route and most-favored treatment as to facilities for interchange — guaranteed in any event by the significant clause upon the subject in the Hepburn law of 1906 — would in some ways be preferable to ownership. It would be more elastic and would, moreover, as a detail of interstate commerce be free from interference by the railroad commissions of the states concerned. Such a traffic agreement would also insure to the Union Pacific a due share of east-bound business, which otherwise, had it purchased the Central Pacific, the Southern Pacific might choose to route entirely over its own long line. Thus, at this writing, the dissolution promised by 1916, — the ultimate time allowed by the judicial decree, — to be brought to a successful close. — ED.

XXIII

REASONABLE RATES¹

STATES may fix local rates for public service, but decisions of the United States Supreme Court have swept away the power of states to make their rates conclusive.

This result has been reached gradually through a line of decisions under the Fourteenth Amendment.

In the earliest cases of rate regulation under the amendment the court declined to review the reasonableness of rates fixed by states, holding this to be purely a legislative question. Later the court decided to review the extent of rate regulation, but held that rates which permitted some, though only a slight, return on the property devoted to a public service were legal. Finally a position has been reached where rates fixed by states are held invalid unless they permit as large profits as the court thinks the public service ought to yield. In this way the power to determine what are reasonable rates for public service has been transferred from state legislatures to the Supreme Court.

The first case in which the extent of state regulation of rates for public service was brought before the Supreme Court for review, after adoption of the Fourteenth Amendment, was *Munn v. Illinois*,² decided in 1876. This case involved the validity of an Illinois statute that fixed a maximum rate for storing grain in elevators at Chicago. Munn, having been convicted and fined in the state courts for violation of the statute, appealed to the United States courts on the ground that enforcement of the rate provided by the statute would take his property

¹ From the *Journal of Political Economy*, December, 1903, pp. 79-97. The same subject is much elaborated in *Publications of the American Economic Association*, 3d series, Vol. VII, 1906, pp. 24-82. • ² 94 U. S. 113.

on money, which I shall presently notice, there was some special privilege granted by the state or municipality; and no one, I suppose, has ever contended that the state had not a right to prescribe the conditions upon which such privilege should be enjoyed.

At the October term of the Supreme Court, in 1876, when the opinion in *Munn v. Illinois* was delivered, cases involving the validity of railway rates fixed by the legislatures of Iowa, Minnesota, and Wisconsin were also decided. Several of these cases involved the power of legislatures to fix conclusively the rates for public service under the Fourteenth Amendment, and in each case the court affirmed this power.

In *Chicago, Burlington & Quincy Railway Co. v. Iowa*,¹ maximum rates fixed for transportation by a statute of that state were contested on the ground, among others, that the rates fixed would take property of the railway without due process of law. Replying to this contention the court in an opinion upholding the statute said through Chief Justice Waite:

In the absence of any legislative regulation upon the subject, the courts must decide for it, as they do for private persons, when controversies arise what is reasonable. But when the legislative body fixes a maximum of charge, it operates upon the corporation the same as it does upon individuals engaged in a similar business.

In other words, the court decided that due process of law was satisfied when rates for public service were fixed by the legislature.

The next case, *Peik v. Chicago & North Western Railway*,² was brought to restrain the enforcement of a law of Wisconsin that fixed maximum rates for passenger and freight. It was contended on the part of the railway security holders that the rates named in the statute would deprive them of their securities, that the railway was entitled to a reasonable compensation for its services, and that the question was a question for the court and not for the legislature. Chief Justice Waite again delivered the opinion of the court in which it was said, among other things:

In *Munn v. Illinois*,³ the court said: "The right of the state to regulate the rates of public service is a question for the legislature, and not for the courts." *Road Co. v. Iowa*,⁴

longer to be found in rates fixed by states, but in decisions of the court as to what was reasonable. Under this decision the states may exercise as much or as little control over rates as the court sees fit to permit. In *Munn v. Illinois*¹ the court said :

The controlling fact is the power to regulate at all. If that exists, the right to establish the maximum of charge, as one of the means of regulation, is implied.

With equal force it may be said that assertion by the court of authority to review the reasonableness of rates fixed by legislatures opened the way for a great reduction in state powers. Since 1889, when the paramount authority of the court was established by a judicial decision, suits to invalidate rates fixed by legislatures have multiplied and decisions have borne with increasing severity on state powers.

In *Budd v. New York*, decided in 1892, the validity of a statute of that state was contested on the ground that rates fixed by it for elevating and storing grain were not within the state power to make and were unreasonable. Mr. Justice Blatchford in delivering the opinion of the court, supported the power of the state to regulate the business of storing grain and said :

In the case before us, the records do not show that the charges fixed by the statute are unreasonable, or that property has been taken without due process of law, or that there has been any denial of the equal protection of the laws ; even if under any circumstances we could determine that the maximum rate fixed by the legislature was unreasonable.

It was also said in this opinion, referring to *Chicago, etc., Railway Co. v. Minnesota* :

What was said in the opinion in 134 U. S., as to the question of the reasonableness of the rate of charge being one for judicial investigation, had no reference to a case where the rates are prescribed directly by the legislature.

This statement was *obiter dicta*, pure and simple, as the rates in *Budd v. New York* were not shown to be unreasonable, was in direct conflict with the language of the Minnesota case and

¹ 94 U. S. 113.

was taken the following year, when the court held in *Smyth v. Ames* that rates which permitted a net profit of as much as 10.63 per cent on one road, but nothing on others, could not be enforced as to either.

Finally, in 1901 comes the decision, in *Cotting v. Goddard*, that rates which yield a profit of 10.9 per cent on the investment are not unreasonable, and that rates which would reduce this profit to 5.3 per cent are unconstitutional.

ALTON D. ADAMS

XXIV

THE DOCTRINE OF JUDICIAL REVIEW¹

WE are now to undertake an investigation of the influence which the doctrine of judicial review has exerted on our American system of railroad control, in order to discover whether it has strengthened or weakened the efficiency of that control. In this inquiry we shall consider, first, its effect on the state's power to reduce rates; second, its effect on the state's power to enforce the rates it has established; and third, its effect, as a resultant of the other two, upon the spirit and ideas of railroad commissions.

Before coming to these precise questions, however, we shall do well to reflect for a moment upon the spirit of the law which has shaped the doctrine of judicial review, and which directs its application; for it will serve to illumine our entire discussion of this subject to recall at the outset the general attitude of the law and of the courts in all cases which involve both public and private interests. The attitude of the courts is determined by the fact that they are charged with the duty of interpreting and applying a law in which the individualistic spirit of the age has been firmly crystallized. In our modern régime the *individual* is the central figure. His importance, his dignity, his sanctity, his rights, and his liberties are everywhere recognized. His use of a free ballot is supposed to guard civil rights and to shape aright the course of government; his pursuit of his individual self-interest is supposed to secure industrial justice and welfare; his freedom of conscience, of thought, of will, and of action is not to be lightly infringed. "All men are created free and equal," says our Declaration of Independence, "and are endowed

¹ From "Railroad Rate Control," by Harrison Standish Smalley, Ph.D., *Publications of the American Economic Association*, 3d series, Vol. VII, 1906, pp. 83-110.

is property, which practically
 ght of control, or else that none
 all of it is beyond constitutional
 and is unwilling to concede. From
 tricated themselves by advancing
 art of income is property and a
 ave saved themselves from get-
 ould have spared themselves the
 tenable fiction, had they actually
 in the light of their own repeated
 ice power. For viewed as a part
 tion is, of course, not subject to
 emnation of property. It is the
 sovereign power, subject to en-
 ints. If the court should really
 question of appropriation or com-
 ury as to the effect of rates on
 le, and hence no classification of

ugh rate regulation is a part of
 that in its exercise the income
 sed, which would amount to a
 ie being regarded as property?
 es many consequences may flow,
 rome of a company may be re-
 nce which also flows from other
 state may adopt. Railroad rate
 regard. Yet no one thinks of
 tions to the rules of eminent
 may pass laws requiring railroads
 y crossings, or to equip each pas-
 hammer, or with drinking water,
 i time, automatic couplers of a

ype for the couplers in use. Any of these requirements
 cessitate an expenditure of money and consequently
 duce the net income of the company by increasing ex-
 hile the improvements were being installed. In effect,

public advantage to be secured through its operation, so rates made by public authority might be set aside on the same grounds. But this is vastly different from saying that their effect on earnings should be the conclusive test in determining their validity.¹

If the view of the matter here suggested were to command acceptance, judicial review would be transformed. Instead of being what it now is, it would become a judicial investigation designed to apply to rate control the same test which is judicially applied to other police regulations. And beyond a doubt this would result in giving to legislatures and commissions much greater freedom of action in rate matters than they enjoy under the present doctrine. The full measure of their proper authority, of which they have been largely deprived by the courts, would be restored to them. And that it is their proper authority is made more evident by the following consideration. A state may, of course, and frequently does employ the police power to control private persons in matters of private concern. In such cases, as has been said, the regulation stands or falls according to whether the public interest, welfare, safety, health, morals, comfort, or, sometimes, even convenience, demand it. If that is the only limitation placed upon the legislature in its control of private persons in their management of private matters, surely no more stringent limitation should be placed on it in its regulation of the management of public business by quasi-public corporations. Indeed there is evidently much ground on which to contend that legislative authority should be even more extensive over public than over private business. It would certainly seem that the government should have more control over property devoted to public use than over property retained for purely private use. It is not an immoderate suggestion, therefore, that the authority in the first case should be barely equal with that in the second.

¹ Of course it is perfectly conceivable that the effect of rates on earnings might be *one* of the points considered by a court. It might be made a question whether the public interest demanded certain rates, if they reduced income so much that bare operating expenses could not be paid, for in that case the road might have to suspend operation. But even if the effect of rates were so considered, the limitation on legislative action would be decidedly different from what it is at the present time.

LEGAL PROBLEMS

Now, the Court begins with the rule that the earnings shall be determined on the basis of the judicial estimate of earning power. The new rates arrived at on the basis of this estimate will neither increase nor decrease the earnings. It will remain the same that it was for the purpose of the establishment of the rates.

This assumption is, it is one which, as we have seen from a review of the cases, the courts have repeatedly held to be legitimate. It need hardly be said that in many cases have failed to take into consideration one of the fundamental characteristics of the railroad business.

It is a matter of general knowledge that, usually, a reduction in rates results in an increase of business. At this stage of the controversy no argument is needed to prove this. It is a fact beyond a mere appeal to those general facts which are common to the business.

Curiously enough it was even admitted with frankness, by Mr. Carter, of counsel for the railroads in *Nash v. Ames*. In arguing that there are dangers against the danger of extortion, he said, "The railroads would more profit by the greatly increased business." A sound policy, perfectly well known to the railroads, advises them that it is better to tempt and attract business by low prices than to try to make a profit by extortion.²

It is a universally accepted fact, however, the courts have held that the effect of lower rates may properly be determined on the assumption that business will not result from the decrease in rates. Of course, be admitted that compensating circumstances may occasionally prevent an increase in traffic, but this is out of the ordinary. The rule remains the same. A reduction in rates, other conditions remaining the same, will tend to augment the volume of business. For the courts to proceed upon the assumption which it does, is to favor the railroads. It enables them to make a

¹ See original monograph.

² 169 U. S. 506.

stronger case than they could were the correct assumption to be made. Upon this principle the judicial view must always be that rates will more seriously affect the earnings of the companies than would be true in nineteen cases out of twenty. As a matter of fact, to put the rates in operation might not reduce either gross or net earnings at all, or might reduce them but slightly. Yet, in contemplation of the courts, earnings would be diminished exactly in proportion to the reduction in the rates.

Of course it may be urged that this is the only definite test which the courts can apply; that to attempt to estimate the probable increase in traffic resulting from a decrease in rates would involve the courts in speculations in which they could never have the guidance of reliable principles.¹ Let this be granted as true; let it be conceded that the courts can find no other test. Nevertheless that fact does not make the test a good one, nor one adequate to the needs of rate cases, nor does it affect the fact that the test gives to the railroads an undue advantage as against the public.

No more favorable is the view which must be taken of the next step in the procedure of the Court. After declaring that the effect of rates upon earnings must be decided on the basis of past business, the Court goes on to hold that that effect must further be determined by applying to past earnings the percentage of reduction in the rates.²

If the effect of the new rates upon earnings were to be determined at all on the basis of past business, it would seem that the correct method of arriving at the result would be to apply freight rates to past tonnage, and passenger rates to past passenger traffic. This would give the maximum earnings which could be secured by the railroad under the new rates, on the condition, assumed by the courts, that traffic would continue

¹ It is said that it cannot be determined in advance what the effect of the reduction of rates will be. Oftentimes it increases business, and who can say that it will not in the present cases so increase the volume of business as to make it remunerative, even more than at present? But speculations as to the future are not guides for judicial actions; courts determine rights upon existing facts. — Mr. Justice Brewer in *Chicago, etc., Ry. Co. v. Dey*, 35 Fed. Rep. 881.

² P. 58 of original monograph.

The Commission with the Board of Trade has not been able to settle the matter. It has failed when it has tried to settle it. In the case of the railways, there was involved the right of the Commission to receive evidence in respect of testimony given by the witnesses. The matter dragged on for some time and finally the railways stated they would not go on with the Commission. Although in the opinion of the Board of Trade the matter was of no such intricacy as to make the appointment of a more elaborate tribunal necessary, the railways will not recognize the Commission procedure in any matter which involves the right of the Commission to receive evidence. Under the new simplifying procedure the Act of 1906 provides that when a trader desires to obtain a through rate, a preliminary hearing before the Board of Trade is necessary. However, since the determination of the board on such a matter has no legal effect, the preliminary hearing has become simply a perfunctory matter. The Board of Trade is unwilling to express an opinion; while the railways are unwilling to take any position that may be used against them before the Commission.

When the rate increases of 1893 were under discussion, the Mansion House Association proposed, on behalf of the traders,

¹ Fourth Report of the Board of Trade of Proceedings under Section 31 of the Railway and Canal Traffic Act, 1888, p. 6.

instead of leaving it as a question of possible dispute to be fought out in individual cases, would effect an improvement. A closer articulation of the conciliation procedure of the Board of Trade with the process of the Commission, whereby the findings of the former would have a status before the latter, would also be expedient. The Commission is becoming more and more a technical court, whose decisions are modified by an attempt to obtain settlements rather than legal decisions. Notwithstanding the criticism directed against it, it is difficult to see how, considering the peculiar geographical, industrial, and railway conditions it has faced, the Commission could have accomplished more than it has done.

S. J. McLEAN

LELAND STANFORD JR. UNIVERSITY

TABLE I

SUBJECT-MATTER OF APPLICATIONS DEALT WITH BY THE COMMISSION, 1889-1903¹

A 3D visualization of a 10x10x10 grid of points. The points are arranged in a regular cubic lattice. A small cluster of points, located in the upper right corner of the grid, is highlighted in red and yellow, indicating a region of high density or interest.

TABLE II

CASES WITHDRAWN OR SETTLED EITHER IN COURT OR OUTSIDE, 1889-1903¹

³ In various cases a number of points are dealt with. In constructing the table, I have selected the most important point in each case.

dates from 1898, it has 100 unpaid members, 10 *ex officio* and 90 appointed for two years by the President of the Republic. The present membership consists of 36 government officials (6 *ex officio*), 34 members of the legislature (4 *ex officio*), and 30 men holding no political office. A combination is thus secured of administrative, legislative, and general opinion.

Among the officials are the Director General of Customs, a brigadier general on the general staff, the Directors of Forests, of Agriculture, of Commerce, and of Labor, the Director of Roads, Navigation and Mines, the Director of Commercial Supervision, the Director of Railways, and five other members of the Council of State. Among these last is M. Picard, well known as the author of the two principal works on French railways, who, as vice chairman, presides over the Committee in the absence of the Minister; while M. Colson, another member, is almost equally well known for his book, *Transports et Tarifs*, and for the articles on Transportation which he contributes to the *Revue Politique et Parlementaire*. Both these officials have heretofore filled the post of Director of Railways.

Among the Deputies MM. Baudin, Barthou, Bourrat, and Sibille, and among the Senators M. Waddington, are specially conversant with railway problems, the first two being ex-Ministers of Public Works, and the three others having written elaborate reports on various railway questions.

In the general group we find twelve presidents or members of Chambers of Commerce (Paris, Lille, Hâvre, Lyons, Bordeaux, and Marseilles being among the cities represented), six presidents or members of national Agricultural Societies, two workmen, the Governor of the Bank of France, seven business men or civil engineers, two of whom represent internal navigation, one judge, and one representative of the International Railway Congress. This last member, M. Griolet, is also vice chairman of the Railway du Nord, and is the only railway official belonging to the Consultative Committee.¹

¹ For further particulars, see J. de la Ruelle, *Contrôle des Chemins de Fer* (Paris, 1903), p. 218, and for the names of present members, see *Annuaire du Min. des Travaux Publics*, 1905, p. 34.

The Committee always declines to indorse any special rate savoring of undue preference or discrimination; for instance, a rate in favor of goods produced by a particular factory or of materials ordered by a particular contractor. It also rejects any rate calculated to draw away traffic from any other French railway or to ruin the business of coasting steamers or canal boats. Thus in April, 1899, a special rate of 15 francs on mineral waters shipped to Paris was requested by the P.-L.-M. Company. This rate was approved in April, 1900, but, the canal men of Roanne having pointed out that it was ruining them, the approval was withdrawn on August 24, 1901.

The Committee endeavors to adjust the tariffs enjoyed by competing industrial centers in such a way as to secure to each the natural advantages of its location. If, however, a particular place or industry has long had the benefit of certain special rates, and has thus acquired a quasi-vested right to them, the Committee will not allow them to be abolished without stipulating that they shall be reëstablished, "if within a year their disappearance gives rise to well-founded complaints."

A good illustration of the manner in which the Committee may obtain concessions from the companies is furnished by the negotiations leading up to the approval on October 27, 1900, of the new tariff of Accessory Charges (*Frais Accessories*). The companies had for twenty-five years been urging that the registration fee for luggage should be raised to 15 centimes, while the Committee still insisted on maintaining it at 10 centimes. The Committee also wished that the companies should guarantee to the consignor of freight using the lines of several companies the route offering the cheapest combination of rates, even when not demanded by him, as they had been doing since 1883 for the consignor of freight using the lines of a single company. The companies, on the other hand, had been anxious to suppress certain special rates affecting about 1350 kinds of freight. The matter was settled by a compromise, in which the companies waived their claim for the 15-centime registration fee, and consented to guarantee the cheapest route in the manner men-

tioned, while the Committee advised the Minister to sanction the suppression of the special rates on the ground that they were practically obsolete.¹

In Algeria and in the Regency of Tunis the service of commercial supervision has been organized in a manner practically identical with that above described, and proposals of rates are referred either to the Minister of Public Works in Paris or to the Resident-General in Tunis. This latter personage is assisted by a consultative committee of eight or ten members most of whom are officials connected with the administration of the Regency.

W. H. BUCKLER

JOHNS HOPKINS UNIVERSITY

¹ Arrêté du 27 October, 1900, Impr. Nat., 1902.

Councils, was fixed by the minister of public works in December, 1894. Any subsequent modifications which may have been made have no bearing on what we are considering here. At that time the council at Magdeburg had only 24, while that at Cologne had 75 members. The nature of their composition can best be illustrated by presenting an analysis of the membership of one such council. The council of Hannover, comprising the railway directories of Hannover and Münster-Westphalen, seems to be a fair type. In that council we find 1 representative from each of the chambers of commerce of Bielefeld, Geestemünde, Hannover, Harburg, Hildesheim, Lüneburg, Minden, Münster, Osnabrück, Ostfriesland and Papenburg, Verden and Wesel ; 1 representative from each of the following corporations or societies : Society of German Foundries in Bielefeld, German Iron and Steel Industrials in Ruhrort, Craftsmen's Union of the Province of Hannover, Branch Union of German Millers in Hannover, Union of German Linen Industrialists in Bielefeld, Society for Beet Sugar Industry in Berlin, Society for the Promotion of Common Industrial Interests in the Rhine Country and Westphalen, in Düsseldorf, and the Society of German Distillers in Berlin ; 4 representatives from the Royal Agricultural Society in Celle ; 3 from the Provincial Agricultural Society for Westphalen, in Münster ; 1 from the German Dairy Society in Schladen and Hamburg, the Society of Foresters of the Hartz, the North German Foresters in Hannover, the Union of Forest Owners of Middle Germany in Birnstein, and from the Society for the promotion of Moor Culture in the German Empire ; and, lastly, 1 from the Society of German Sea Fishers in Berlin. This one illustration is probably sufficient to show the thoroughly representative character of the circuit councils. If a circuit comprises railways covering territory of other German States, the chambers of commerce, industrial, and agricultural societies of such territory may also be represented in the council. The minister of public works has power to admit other members, and frequently does so when the nature of the questions upon which the council deliberates makes it desirable. Thus, at a meeting in which the rates on coal and coke — to be noted hereafter — from

to those having 3 votes. The Prussian State railways had 139 votes, the Bavarian State railways 28, those of Saxony 16, the State roads of Alsace-Lorraine 11, the State roads of Baden 10, and so on down, the remainder representing the smaller State and private railways. These figures show the predominating influence of Prussia in the conference.

Bodies subordinate to the general conference have already been alluded to. These are the Tarif-Kommission and the Ausschuss der Verkehrsinteressenten (tariff commission and committee of those interested in transportation). The tariff commission is a standing committee whose members represent Prussian State roads, 2 Swiss roads, and 1 of the railways of Mecklenburg. It meets 3 times a year, and occupies itself with petitions and other communications from shippers. The committee of shippers (Verkehrsinteressenten) is composed of members representing agriculture, trade, and industry; and some of the matters brought before it are previously discussed by a subcommittee. Both of these bodies occupy themselves almost exclusively with freight rates and matters immediately connected with them. Out of 23 items brought before them during a 2 days' session in 1893, 22 were deliberated upon in joint session, although each body voted separately. The discussions in these sessions are so thorough that the recommendations made are, in the great majority of cases, approved by the general conference. Those conclusions of the commission which are adopted in the form of a declaratory statement become binding upon members unless protests are made. Subjects discussed in the conference and commission may, and frequently are, brought before the councils.

Among the various railway traffic and rate unions which might be mentioned none have exerted an influence on rates at all comparable to that which has been exercised by the Society of German Railway Administrations. Founded as a Prussian society in 1846, it became in quick succession a national and an international organization, embracing the railways of Germany, Austria, Hungary, Roumania, Luxemburg, Holland, Belgium, Bosnia, and Russian Poland. Both State and private railways are eligible to membership. A series of 8 standing

of which is regularly monopolized by the post offices of the contracting States, the treaty governs all shipments of goods from or through one of the States to another. It provides for uniform through bills of lading, prescribes routes for international traffic, fixes liability in cases of delay and loss, prohibits special contracts, rebates, and reductions, except when publicly announced and available to all, and prescribes certain custom-house regulations. Not the least important feature of the treaty is the creation of a central bureau, organized and supervised by the Swiss Bundesrath, with its seat in Berne. The duties of the bureau are five:

1. To receive communications from any of the contracting States, and to transmit them to the rest of them.

2. To compile and publish information of importance for international traffic, for which purpose it may issue a journal.

3. To act as a board of arbitration on the application of the countries concerned.

4. To perform the business preliminaries connected with proposed changes in the agreement, and, under certain circumstances, to suggest the meeting of a new conference.

5. To facilitate transactions among the railways, especially to look after those which have been derelict in financial matters. After notice has been given by the bureau, the State to which the railway belongs or by whose citizens it is owned can either become responsible for the debts of the road or permit the exclusion of the road from international traffic.

The expenses of the bureau are met by contributions of the contracting States in proportion to mileage.

The original agreement provided that any of the States might withdraw at the end of 3 years, on giving 1 year's notice. No such notice has ever been given. Any violation of the treaty can be punished in the courts, and a judgment having been rendered in one country the courts of the others are bound to assist in its execution, unless the decision conflicts with their own laws. But so far as the question of fact is concerned there is no appeal, and a German court is bound to accept the findings of a court in France. Germany, Austria, Hungary, Russia,

Switzerland, and, to a less extent, France have embodied provisions of the international code in their internal code, thus leading to unification beyond the limits of international traffic. To what extent the Bernese treaty may influence other phases of the national and international laws of the States of central Europe cannot well be foreseen. That States differing widely in forms of government, geographical position, and commercial interests have voluntarily made themselves amenable to a common code of law under these circumstances, again impresses one with the great power and many-sided influence of railways and the healthy development of closer international relations. The code is binding for a domain embracing nearly 3,000,000 square miles and 260,000,000 people. It ranks in importance with the international postal, telegraph, and copyright unions.

Proceedings of advisory councils. The leading features of the Prussian railway administration relating to rates have now been presented. It remains to illustrate by means of a few side lights from the proceedings how a part of the machinery acts. To convey a somewhat detailed view of the workings of the administrative organs directly concerned with the operation of the railways would unduly extend this paper; besides, it would be a little technical and not essential from the economic point of view. So we shall content ourselves with a brief account of some of the deliberations of the advisory and other bodies directly occupied with questions about rates. We shall save time by first obtaining a general idea of the German system of rates, for which purpose the general plan of the German reform tariff is here given:

GERMAN TARIFF SCHEME

1. Fast freight by the piece (express package freight).
2. Fast freight by the car load.
3. Piece goods (less than car loads).
4. General car-load class A 1, in shipments of at least 5000 kilograms.
5. General car-load class B, in shipments of at least 10,000 kilograms.
6. Special tariff A 2, in shipments of at least 5000 kilograms.
7. Special tariff I, II, III, in shipments of at least 10,000 kilograms.

The rates and what pertains to them are officially published in volumes not unlike our monthly magazines. This tariff scheme was first introduced in 1877, and through the influence mainly of the general conference it has become gradually more unified. It is obvious that the price of transportation of goods becomes less as they fall into a class farther down the list. The general car-load classes include goods of higher value not enumerated in any of the special tariffs, while the special tariffs I, II, and III embrace less valuable goods — their value falling by degrees — so that, generally speaking —

Special tariff I includes manufactured goods.

Special tariff II includes intermediate products.

Special tariff III includes raw materials and bulky goods of small value, such as certain waste products of gas factories, tanneries, paper factories, slaughterhouses, etc.

Special tariff A 2 is for goods belonging to special tariffs I and II in consignments below 10,000 and above 5000 kilograms. Goods belonging to special tariff III, but weighing less than 10,000, though at least 5000 kilograms, are transported at the rates of special tariff II. Then there are special rules and rates for such things as explosives, precious metals, vehicles, timber, fish, bees, meat, carrier doves, etc. Questions as to classification and the transference of goods from one class to another often arise. Here is a typical case :

The Chamber of Commerce of Lennep, a Rhenish city, petitioned the general conference to transfer manufactured horse-shoes — “raw hoof irons,” the Germans say, but which will here be designated simply as “horseshoes” — from special tariff I to special tariff II. A prominent business firm brought the question before one of the railway directories, and from there it was carried before the minister of public works. The minister consulted the permanent tariff commission and the committee of shippers, and finally the question was brought before the advisory councils.

The petitioners asserted that the manufacture of horseshoes was a new industry which, after many costly experiments, had only recently gained a firm foothold ; that the trade had been

chamber of commerce of Bielefeld and subsequently indorsed, either in part or entire, by other organizations. The petition sought a temporary suspension of rates applicable to coke and coal sent from the Rhenish mining districts to the German seashore and to foreign countries. The suspension was to remain in effect until the prices in the coal market should return to a normal level.

In the consideration of this question the railway directory asked the committee and council to deliver an opinion on each of the following points: (1) Is the level of prices of coke and coal in the Rhenish-Westphalian district an abnormal one? (2) How must the prices of coke and coal be constituted in order that their level may be characterized as normal? (3) Should a permanent or temporary suspension of existing freight rates on coke and coal be recommended in order to effect a reduction of prices within the country? (4) What markets and what rates come into consideration in case of the temporary or permanent suspension of the rates in question? Shall the rates to foreign countries or also the rates to the seashore be changed? (5) What will be the probable effect of the proposed suspension of rates with reference to the sale and the price of coal and coke within the country?

In both the committee and in the council this problem was thoroughly dissected. Naturally there were differences. Abnormal prices were thought to be prices which include an element of profit out of proportion to the other constituents of price. On the one hand, a profit of 40 per cent was shown to exist, which, however, the experts present at once proved to be confined to two specially favored mines. In computations to ascertain the average selling price of coal there was a difference of several marks, which called forth the most rigid examination of the statistics and other evidence upon which the figures were based. The railway authorities showed that in 5 years the outlay for coal for locomotives had risen from $4\frac{1}{2}$ to 7 per cent of their total expenses, while coal was still rising, and the coal men showed that their cost of production had risen because of advances in wages and expenses connected with insurance. It

fixed in the first two. On the other hand, we have the national and circuit councils with their standing committees and the committee of shippers. These primarily take the social and economic point of view. They are not legally responsible for the conduct of the railways, but act as advisory bodies. They represent all the different interests of the nation, and through them every citizen has not only an opportunity but a right to make his wants known.

The marble and slate industry of Thüringen is relatively insignificant, yet of vital importance to the inhabitants of that section of the country. We have seen how complete an examination the petition of these people received at the hands of the highest authorities of the land. A fair and prompt hearing can be denied to no man, rich or poor. The railways are made real servants. All the administrative, legal, and advisory bodies are organically connected with one another and with the parliament. The lines may be drawn taut from above as well as from below. The elaborate system of local offices makes the system democratic, and the cabinet office and the directories give it the necessary centralization. The system presents that unity which a great business requires, on the one hand; and, on the other, that ramification and elasticity which the diverse and manifold interests of a great nation need for their growth and expansion.

In the formation of the councils the elective and the appointive elements are so well proportioned that it is impossible to "pack" any one of them. In this respect each body is a check on the other. It is easy to reproach the system with "bureaucracy," but to give adequate support to such a stigma would be an impossible task. We need only recall the analysis of the membership of one of the councils. Farmers, dairymen, fishermen, foresters, traders, miners, manufacturers — the long array of human professions have here their representatives. One representative may shape his views according to some particular philosophy of the State. Another will at once restore the balance by presenting the opposite. One member may make extreme statements about some branch of trade or industry. Another will

furnish exact information for its refutation. I doubt whether we can find anywhere in the world deliberative or administrative bodies in which the tone and the many-sidedness of the proceedings, the amount and variety of special knowledge displayed, and the logic of the debates present more points of excellence than in these councils and other bodies.

If from the point of view of the railways nothing should come of these proceedings — a most violent assumption — the information brought together would alone make them invaluable. No investigating committee of Congress or legislature ever had a better array of talent in every field at its disposal and under its control than is found in one of these councils or commissions.

It is not my purpose here to present new schemes, or to suggest ways and means by which existing institutions of our own country might be modified to perform similar functions. But let me ask whether, if our coal and iron industry, or fruit and cattle raising, or any other industry, were to receive an examination like that given to the Rhenish coal and coke industry, many things might not be different from what they now are? Imagine a well-organized assembly whose members could speak for the railways, for wheat and cattle, for fruit and steel, for forests and for mines, and is it not probable that the effects anticipated in the circular letter of 1875 would make themselves felt also in the United States? Both our railways and the public have repeatedly gone to extremes because neither understood the other. A system like the Prussian reveals the railways to the public and the public to the railways. It tends to remove blind prejudice and violent measures on both sides. By reflecting accurately the existing conditions, these conferences lead to tolerance, forbearance, and mutual concessions. The conclusions reached often have as salutary an effect on industrial situations as suspended judgments of our courts on defendants. It would be difficult to find in Prussia to-day, among the representatives of any class or interest, objections to the entire railway system which are not relatively insignificant. Both the public and the railways have gained more and more as the system has developed.

It will doubtless have been noticed that in the discussion of the council proceedings the decisions and their effect were not stated. It was my purpose simply to show the nature of the councils, and either a negative or an affirmative vote would throw no additional light on the problem. Without a full presentation of local details it could mean little to state that the council voted to place sweepings into the special tariff with fertilizers.

BALTHASAR H. MEYER

MADISON, WISCONSIN

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